

15 DC5JKUR1

Hearing

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,  
5 v.  
6 RUDY KURNIAWAN,

12 Cr. 376 RMB

7 Defendant.  
8 -----x  
9

10 December 5, 2013  
11  
12 Before:  
13 HON. RICHARD M. BERMAN,  
14 District Judge  
15  
16 APPEARANCES  
17 PREET BHARARA,  
18 United States Attorney for the  
19 Southern District of New York  
20 JASON HERNANDEZ,  
21 JOSEPH FACCIPONTI,  
22 Assistant United States Attorneys  
23 JEROME MOONEY,  
24 VINCENT S. VERDIRAMO,  
25 Attorneys for defendant Kurniawan  
Also Present:  
JAMES WYNNE, Special Agent FBI

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Hearing

1 (In open court)

2 (Case called)

3 THE COURT: How are you all? Please be seated.

4 So the purpose of today's proceeding is what is called  
5 a Daubert hearing with respect to the proposed expert witness  
6 that the defense is seeking to call. Just a few housekeeping  
7 matters before we get to that first witness.

8 So, number one, about jury selection, we have decided  
9 to do the jury selection in Courtroom 26 A, so we should easily  
10 be able to do that in the first day. It is a bigger courtroom  
11 and I think we might need it. Then as soon as we have our  
12 jury, we'll come back down here and conduct the trial in this  
13 courtroom. This is 12 D.

14 So, two, I got a letter from the defense, an  
15 application on December 3. I don't mean to be picky, but we  
16 said no more applications, and so here comes an application!

17 MR. MOONEY: I apologize. They told us we had to do  
18 that.

19 THE COURT: You do. This is not a penalty. I don't  
20 use Court Connect. The application, even if it were timely, so  
21 to speak -- and I am not penalizing you for being late -- would  
22 be denied. If you need or want realtime transcription, confer  
23 with the Court Reporters, and they'll enable your computers so  
24 that you can have that. That is the way we do realtime  
25 transcription.

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1                   MR. MOONEY: That won't give us any internet  
2 connection.

3                   THE COURT: No. We don't do internet connection, not  
4 just for you. That is my practice, we don't do internet  
5 connection.

6                   MR. MOONEY: Okay, your Honor. We are additionally  
7 requesting, of course, the electronic access.

8                   THE COURT: I'll get to that in a moment.

9                   The other question is was there an open issue with  
10 respect to forensics, the examinations, or is that between the  
11 two of you and working out or worked out, meaning the  
12 evaluations you each had?

13                  MR. MOONEY: Yes, that is worked out, your Honor. We  
14 are not planning on putting anybody on in the trial on that  
15 issue.

16                  THE COURT: Okay. Your application is for a cell  
17 phone and a computer to bring into the courtroom?

18                  MR. MOONEY: That's correct. We each would like to  
19 have our cell phones and also have a computer.

20                  THE COURT: So that application is granted, but you  
21 have to submit an order. There is a form order I have to sign.  
22 Otherwise, they'll confiscate it as you try to come in.

23                  MR. MOONEY: I understand. We'll get that in  
24 tomorrow.

25                  THE COURT: Okay. Then you want an application with

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1 respect to the clothes for Mr. Kurniawan. By the way, it is  
2 Kurniawan or Kurniawan? Are we saying different things?

3 THE DEFENDANT: Kurniawan.

4 MR. MOONEY: Kurniawan.

5 THE COURT: Kurniawan? Did I say it right?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: So that application will, of course, be  
8 granted, but you need to get me today an order because the BOP  
9 requires that I sign an order, then you have to take it to the  
10 Marshals, or I am not exactly sure what.

11 MR. MOONEY: We have to deliver a signed order with  
12 the clothes to the Marshals tomorrow.

13 THE COURT: You have to get me the order today and  
14 I'll sign it. It is a busy day tomorrow.

15 MR. MOONEY: We can fax that over, your Honor?

16 THE COURT: Yes. So actually that would have to be  
17 like in the next hour or two or three. Let's start the hearing  
18 and then we'll see where we are.

19 MR. MOONEY: Yes.

20 THE COURT: I think that's it as far as my list. Do  
21 you have any other issues or housekeeping?

22 MR. MOONEY: Not for us, your Honor.

23 MR. HERNANDEZ: We had raised whether the defense  
24 wanted a jury trial on forfeiture in the event of a conviction.  
25 We have spoken to defense counsel. They don't want one.

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1           I would just appreciate confirmation on the record so  
2 that we know that we don't have to prepare for that if that is  
3 the case.

4           MR. MOONEY: That's correct, your Honor.

5           THE COURT: There are two more little housekeeping  
6 matters.

7           So I am going to give you each lists of names and  
8 entities. We are actually going to hand these out to the jury  
9 because they're pretty long instead of my reading all of them.  
10 I may read them, but I would like the jury, on the voir dire,  
11 to have these names, go over them. You have to make sure that  
12 they are accurate and that if there is any more identification  
13 information to be supplied, that we have that right away.

14           Then I have received and incorporated useful questions  
15 from both sides and also description of the case for the voir  
16 dire. I want to go over the description of the case just to  
17 make sure that I've got it the way that you're each comfortable  
18 with it, just that paragraph, and I will read it to you. It is  
19 actually quite short. So when we get to the section of the  
20 voir dire called "outline of the case," I will say the  
21 following:

22           As I mentioned, this is a criminal case. It is  
23 entitled United States versus Rudy Kurniawan. The defendant  
24 has been charged in a two-count indictment in which it is  
25 alleged that, Count 1, in or about 2004 up to and including in

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1 or about February 2012, the defendant Rudy Kurniawan committed  
2 mail fraud by using the mails or interstate carriers in a  
3 scheme to create, sell and attempt to sell very expensive  
4 counterfeit wines.

5 Count 2, from on or about November 28, 2007 up to and  
6 including on or about May 2, 2008, the defendant Rudy Kurniawan  
7 committed wire fraud by using telephone and/or interstate wires  
8 in a scheme to defraud Fine Art Capital by making false  
9 representations to Fine Art Capital when applying for a \$3  
10 million loan.

11 That is mostly for the government. Was it 3 million?  
12 Did I get that right?

13 MR. MOONEY: Yes.

14 MR. HERNANDEZ: That's right.

15 THE COURT: Is that okay for the government's  
16 description of the case?

17 MR. HERNANDEZ: Yes.

18 THE COURT: Here is the paragraph more for the  
19 defense, the next paragraph.

20 The defendant Rudy Kurniawan denies the charges  
21 against him. With regard to the counterfeit wine charge, Mr.  
22 Kurniawan alleges that he was part of the Exclusive World of  
23 Fine Wine -- that I took from the defense submission -- and had  
24 one of the finest palates in the world. That also comes from  
25 the defense submission. In this world, he became a scapegoat

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1 for shortcomings and dealings of others in a world of rare and  
2 expensive wines.

3 With regard to the scheme to defraud Fine Art Capital,  
4 Mr. Kurniawan alleges he provided capital for the \$3 million  
5 loan and was forthright and answered to the questions posed in  
6 the Fine Art Capital loan application.

7 MR. VERDIRAMO: I believe the word you said was,  
8 "capital." I believe you meant to say, "collateral."

9 THE COURT: You're right.

10 MR. VERDIRAMO: Thank you, Judge.

11 THE COURT: Otherwise okay?

12 MR. VERDIRAMO: Yes, your Honor.

13 MR. MOONEY: Yes.

14 THE COURT: So all right. I think that is the  
15 housekeeping. So let's see here, the proponent of the expert  
16 testimony has the burden of establishing by a preponderance of  
17 the evidence that the admissibility requirements of Rule 702  
18 are satisfied. The Court, the District Court, is the ultimate  
19 gatekeeper. So I guess that means that, Mr. Mooney, you call  
20 your first witness.

21 MR. MOONEY: Thank your Honor. We would call Mr. C.  
22 Robert Collins.

23 MR. VERDIRAMO: Before we begin, we were notified  
24 moments ago the prosecution may present a rebuttal witness, a  
25 Mr. Stein, who I believe is in the courtroom. We move for

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1 sequester at this point.

2 THE COURT: That is to say, you're asking Mr. Stein to  
3 leave the courtroom?

4 MR. VERDIRAMO: That's correct.

5 THE COURT: That is fair request if he is here.

6 MR. HERNANDEZ: He is not here. We actually told him  
7 not to enter. I am glad he followed instructions.

8 MR. VERDIRAMO: Thank you.

9 CORNELIUS ROBERT COLLINS,

10 called as a witness by the Defendant,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. MOONEY:

14 Q. Mr. Collins, how are you employed? What do you do for a  
15 living?

16 A. I have, at the moment I have some property investments and  
17 I do wine consultation work for private clients.

18 Q. How long have you been involved in the wine consultation?

19 A. Well, I had a wine consultation company that I started in  
20 1978, and I was involved starting in 1976 with Draper & Esquin.

21 THE COURT: How long is the question? How long have  
22 you been involved in wine consultation?

23 THE WITNESS: 35 years.

24 BY MR. MOONEY:

25 Q. How did you first become involved in wine sales and

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1 purchase?

2 A. Well, I first took a job in 1974 with Ernie's Wine  
3 Warehouse.

4 Q. What is Ernie's Wine Warehouse?

5 A. It was a large retail wine chain. They had 78 stores and  
6 one large wine --

7 THE COURT: Where was that?

8 THE WITNESS: In San Francisco.

9 BY MR. MOONEY:

10 Q. What was your initial position with Ernie's Wine?

11 A. My initial position was a clerk.

12 Q. Were you ultimately upgraded from that to a different  
13 position?

14 A. Yeah, I was promoted three months later to be head wine  
15 buyer for Ernie's Wine Warehouse.

16 Q. What kind of wines did Ernie's Wine warehouse purchase?

17 A. Well, they purchased a lot of different wines. At the time  
18 I was first employed, they purchased a large quantity of  
19 imported bordeaux wines because those wines were being dumped  
20 due to the Cruz.

21 THE COURT: Being what, dumped? Did you say?

22 THE WITNESS: Yeah, there was a large scandal in  
23 bordeaux just preceding this period of time around a firm  
24 called Cruz, and that just basically led to a crash in the  
25 bordeaux wine business at the time.

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1           There were large quantities of bordeaux wines that  
2 were in various importers in the United States that were being  
3 sold at distressed prices.

4 BY MR. MOONEY:

5 Q. Was Ernie's in a cash-long position at that point?

6 A. Ernie's & Esquin had seen this coming because he had sold  
7 all of his wine stocks in all of his stores, so we were in a  
8 position where he had a lot of disposable cash and no inventory  
9 to sell off.

10 Q. As the head wine buyer, were you responsible then for  
11 assisting in the purchase and collection of this large volume  
12 of bordeaux wines?

13 A. Yes, I was assisting. I actually made most of the  
14 decisions for these purchases.

15 Q. Did you start to become more familiar with the bordeaux  
16 wines during that period of time?

17 A. Absolutely.

18 Q. Did you subsequently leave Ernie's and go to a different  
19 company?

20 A. Yes.

21 Q. What company was that you went to?

22 A. I went to work for a company called Drapier, which was the  
23 forerunner of Draper & Esquin.

24 Q. How long were you with Drapier?

25 A. I was there for three months.

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1 Q. When you left Drapier, did you leave them and take a trip  
2 to Europe?

3 A. Yes, that is when I took my trip to Europe for wine  
4 education purposes.

5 Q. How long were you in Europe on that trip?

6 A. Over three months.

7 THE COURT: This would be what year?

8 THE WITNESS: This is in 1976, sir.

9 THE COURT: When?

10 THE WITNESS: 1976.

11 THE COURT: '76?

12 THE WITNESS: Yes.

13 BY MR. MOONEY:

14 Q. What regions of Europe did you go to during that period of  
15 time?

16 A. Well, we started out in London with the auction markets and  
17 then we traveled to Bordeaux twice, Burgundy twice and Germany  
18 twice.

19 Q. During this trip were you just traveling on your own or did  
20 you have letters of introduction?

21 A. No. I was furnished with letters of introduction from a  
22 lot of major importers for the chateaus where we had sold the  
23 wines before at Ernie's, and I was also traveling with a fellow  
24 named David Terrier, who also had letters of introduction and  
25 between the two things, that was how we introduced ourselves to

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1 the various chateaus.

2 Q. Did that allow you to be received and to interact with the  
3 chateaus?

4 A. Yes.

5 Q. Did you spend time in Burgundy?

6 A. Yes.

7 Q. Did spend time in Bordeaux?

8 A. Yes.

9 Q. During the time that you were in Burgundy and Bordeaux did  
10 you have an opportunity to go to many of the vineyards?

11 A. Yes.

12 Q. Did you have an opportunity to meet the people that were  
13 connected with the operations of those vineyards?

14 A. Yes.

15 Q. Did you have an opportunity to stay with some of them?

16 A. Yes.

17 Q. You've looked at some of the wines that are involved in  
18 this case. Did you have an opportunity to go to any of the  
19 vineyards that relate to things that you've seen in connection  
20 with this case?

21 A. Yeah, we took most directly the Domaine de la  
22 Romanee-Conti.

23 Q. What was your connection with that?

24 A. My traveling companion, Dave Terrier, had gone to school  
25 with Pam de Vaillaine, which is --

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1                 THE COURT: Slow down and spell some of these names so  
2 he can get it correctly.

3                 THE WITNESS: Sorry. De Vaillaine, like it is on the  
4 wine labels, D E V A I L L A I N E.

5 Q. It will be under D, small D E?

6 A. Right.

7 Q. Small D E?

8 A. Yes, it is a small D E, capital V.

9 Q. So you stayed at the chateau?

10 A. Actually, we stayed at private residence in Boucheron, a  
11 small town south of the chateau where the de Vaillaine is.

12 Q. During the period of time you were in Burgundy and  
13 Bordeaux, did you have the opportunity to taste wines at the  
14 various chateaus?

15 A. Yes.

16 Q. Did you have a chance to look at the processes that were  
17 followed by the various chateaus?

18 A. Yes.

19 Q. Did you have an opportunity to inspect and look at their  
20 labeling and bottles?

21 A. Yes.

22 Q. Did that include just the current vintages they were  
23 putting out, or did you have an opportunity to look at the  
24 older vintages, older materials that had been maintained?

25 A. We looked at the older vintages.

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1 Q. After you returned from -- by the way, did you keep notes  
2 of your trip?

3 A. Yes, I did.

4 Q. Do you still have those notes?

5 A. Yes, it is this book here.

6 Q. That is the black notebook?

7 A. That's correct.

8 Q. Those are detailed tasting notes and notes of where you  
9 were, the travel you made during that period of time?

10 A. Yes, they are.

11 Q. Those were contemporaneously created?

12 A. They were created at the moment. There are stains of wine  
13 on some of the notes.

14 Q. After you returned from your trip to Europe and this  
15 education process, where did you go to work?

16 A. When I returned from Europe, I went back to work for what  
17 was at the tight time becoming Draper & Esquin, E S Q U I N,  
18 and that is D R A P E R.

19 THE COURT: That was after this three-month period; is  
20 that right?

21 THE WITNESS: Sorry.

22 THE COURT: That was after this three-month period  
23 abroad?

24 THE WITNESS: Correct, that was for the fall and  
25 Christmas Season.

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1 BY MR. MOONEY:

2 Q. Draper & Esquin was the company that had evolved from the  
3 other company that you worked for before you had gone to  
4 Europe?5 A. Precisely. The person I was traveling with actually had  
6 entertained the notion to buy the company Esquin, and while we  
7 were in Europe, Jerry Draper actually purchased the company  
8 from Ken Kew.

9 THE COURT: From?

10 THE WITNESS: Ken Kew, K E W, who was the current  
11 owner of Esquin, and the company became Draper & Esquin.

12 BY MR. MOONEY:

13 Q. What were your duties at Draper &amp; Esquin?

14 A. My duties were many-fold. I was in charge of the wine  
15 buying for Draper & Esquin. I had a hundred percent of the  
16 auction wines that were bought at that time, and there was  
17 another fellow named Rene Rondeau, R O N D E A U, the two of us  
18 shared the responsibilities for all of the purchases in Europe.

19 Q. What was the business of Draper &amp; Esquin?

20 A. Draper & Esquin was at that time a relatively unusual  
21 license in that it --

22 THE COURT: Unusual?

23 THE WITNESS: Unusual license in that it had an import  
24 license and it had a retail license. So the business of Draper  
25 & Esquin was to import wines that they would then sell on their

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1 own retail store.

2 THE COURT: And they were located in?

3 THE WITNESS: They were on 655 Sutter in San  
4 Francisco.

5 BY MR. MOONEY:

6 Q. In connection with your work at Draper & Esquin, did you  
7 also have connection with a wine club?

8 A. Yes, in the same building there was a wine club called  
9 Vintners Club of San Francisco. It it was founded by Jerry  
10 Draper, and they were considered the foremost wine tasting club  
11 in the United States at the time.

12 I was a cellar master of the Vintners Club between '76  
13 and 1978. I conducted well over 60 percent of the tastings  
14 that the club did.

15 Q. What kind of wines would be tasted at the Vintners Club?

16 A. We virtually attempted to taste everything that was  
17 available in the San Francisco market. We, of course,  
18 categorized these. There were many people at the time that  
19 belonged to the Vintners Club of San Francisco that were wine  
20 owners and wine makers from Napa Valley.

21 So we devoted 50 percent of the tastings to domestic  
22 wines and 50 percent to imported wines.

23 Q. As the cellar master, were you responsible for approving  
24 the wines that would be made available at the tasting?

25 A. Yes.

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1 Q. Was one of the things that you would look at whether the  
2 wines appeared to be correct or authentic?

3 A. Yes.

4 THE COURT: Sorry, could you repeat that question? I  
5 missed it.

6 MR. MOONEY: Yes, whether he looked at, one of the  
7 things he looked at was whether or not the wines were correct  
8 and authentic.

9 THE COURT: Did you then ask him another -- or you  
10 were about to ask a follow-up?

11 MR. MOONEY: The follow-up.

12 THE COURT: You answered, "yes" to that?

13 THE WITNESS: Yes.

14 BY MR. MOONEY:

15 Q. As a buyer for Draper & Esquin, were you also looking at  
16 whether or not the product that was being purchased was  
17 correct?

18 A. Yes.

19 Q. You put us, I think, in '76 to '78 at this point in time.

20 Was there a problem in the market at that point with  
21 regards to counterfeit wines?

22 A. There was a beginning of a problem. It doesn't look like a  
23 problem compared to today, but we were the only company that  
24 actually would send employees -- myself -- to London to bid in  
25 auctions for wine that we would then resell in the retail

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1 store.

2 We did this as a process of authentication for these  
3 wines because there was numerous wines that we wouldn't have  
4 normally accepted as proper products for selling, and we had a  
5 limited amount of money compared to everybody else, and so we  
6 were trying to spend it wisely.

7 Q. Did you start at that point in time suggesting that wine,  
8 certain bottles not be purchased because they appeared to be  
9 questionable?

10 A. Precisely.

11 Q. While you were at Draper & Esquin, did Draper & Esquin  
12 produce catalogs of the wines they did have available?

13 A. Yes.

14 Q. Have you brought any of those catalogs with you today?

15 A. I brought a couple of catalogs with me today, yes.

16 Q. Would you tell us which ones you brought.

17 A. There is a Christmas catalog from autumn of 1977, and there  
18 is a Christmas catalog from 1978.

19 Q. Were you involved in the creation of those catalogs?

20 A. Yes.

21 Q. Did those catalogs accurately represent the nature of the  
22 wines that were available through Draper & Esquin?

23 A. Yes, although I think they were a broader, there were a  
24 broader representation than that. We also created lots of  
25 articles that had to do with wine areas in a general sense and

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1 not just specifically with wines that we were selling.

2 Q. Do those catalogs include wines from Burgundy?

3 A. Yes.

4 Q. Do they include wines from Bordeaux?

5 A. Yes.

6 Q. Do they include any discussions of the wines from those  
7 areas?

8 A. Yes.

9 Q. Were you involved in the creation of that product?

10 A. Yes.

11 THE COURT: When you say the "product," you mean the  
12 catalog?

13 MR. MOONEY: Catalogs, I am sorry, yes, not the wines.

14 BY MR. MOONEY:

15 Q. You weren't ever a wine-maker, right?

16 A. Not professionally.

17 Q. But in the 1978 catalog --

18 A. Yes.

19 Q. -- does it also include tasting notes from some of the  
20 Vintners Club?

21 A. Yeah. The 1978 catalog includes a note from the directors  
22 dinner, an annual directors dinner, and the 1978 edition, the  
23 wines that were selected for this tasting were twelve vintages  
24 of the Domaine de la Romanee-Conti, Romanee-Conti vineyard.

25 Q. Were Domaine Romanee-Conti wines available for purchase

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1 from Draper & Esquin?

2 A. Yes.

3 Q. And those wines would have been wines that you approved the  
4 purchase of?

5 A. Yes.

6 Q. Where any Domaine Ponsot wines available?

7 A. We didn't handle Domaine Ponsot. There was another  
8 importer in the San Francisco area, Current lynch Wine  
9 Selections, who was the primary importer of this domaine, and  
10 we felt that our domaines were adequately took care of our  
11 needs.

12 Q. Did you handle other wines that came from both the Burgundy  
13 and Bordeaux region?

14 A. Yes.

15 Q. Did there come a time when your relationship with Draper &  
16 Esquin changed from that of employee to something else?

17 A. In 1978, after I returned from one of the trips, I set up a  
18 consultation firm, C. Robert Collins Wine Consultation, in San  
19 Francisco, and at this time I didn't directly collect a salary  
20 from Draper & Esquin. I still worked closely with Jerry Draper  
21 and was with other people in Draper & Esquin, but I had other  
22 independent clients besides the regional store.

23 Q. Would you categorize yourself as an independent contractor  
24 at that point?

25 A. Yes.

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1 Q. Would you still go out and make wine purchases or at least  
2 authentications for when you purchased for Draper & Esquin for  
3 that period?

4 A. Yeah, I acted as an agent for Tiffany's in San Francisco  
5 and for the Gettys to supply wines for Draper & Esquin and --

6 THE COURT: Did you say the Gettys?

7 THE WITNESS: Yes, the family.

8 THE COURT: G E T T Y?

9 THE WITNESS: That's correct.

10 BY MR. MOONEY:

11 Q. After you became an independent contractor, did you start  
12 providing wine authentication and purchase and purchase advice  
13 to people other than Draper & Esquin?

14 A. Yes.

15 Q. Did you continue to go to wine auctions around the world?

16 A. Yes, but not as often as I had in prior years.

17 Q. Over the period of time that you've been --

18 THE COURT: Excuse me. Could I understand, you say  
19 not as much as the period in that time?

20 THE WITNESS: Not as often, yes.

21 THE COURT: So I am not sure. You went to Europe in  
22 1976, right?

23 THE WITNESS: Yes.

24 THE COURT: And now you became a consultant when?

25 THE WITNESS: In 1978.

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1                   THE COURT: How many times in-between '76 and '78 had  
2 you gone to wine auctions around the world, if any?

3                   THE WITNESS: Six.

4                   THE COURT: Between '76 and '78?

5                   THE WITNESS: Yeah, approximately three a year.

6 BY MR. MOONEY:

7 Q. How many auctions totally do you think you've attended on  
8 behalf of the clients in your 35 years of work?

9 A. 300.

10 Q. Was all of the authentication work that you did in  
11 connection with auctions or did you also represent clients with  
12 respect to private purchases that were being made?

13 A. No. We represented clients for private purchases also.

14 Q. Do you remember a rather large collection called the Lucia  
15 Collection that became available for sale?

16 A. Yes.

17 Q. Were you involved in the authentication of that cellar for  
18 purchase?

19 A. I was.

20                   (Continued on next page)

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1 BY MR. MOONEY:

2 Q. Who were you representing with regards to that purchase?

3 A. Connoisseur Wine Imports.

4 Q. And was there anybody else that was attempting to make the  
5 purchase of that collection?

6 A. Yes. The Draper &amp; Esquin.

7 Q. Were you representing Draper & Esquin with regards to that  
8 purchase?

9 A. No.

10 Q. Was there somebody else that was doing authentication on  
11 behalf of Draper & Esquin?

12 A. Yes.

13 Q. Who was that?

14 A. His name was Steve Gilbertson. He was a gentleman I hired  
15 in 1977.

16 THE COURT: Gilbertson?

17 THE WITNESS: Yes.

18 Q. You hired him to work at Draper &amp; Esquin?

19 A. Yes.

20 Q. But he wasn't working for you in 1985 for the Lucia  
21 collection?

22 A. No. We were friendly competitors at the time.

23 Q. Did you work together on the authentication?

24 A. No.

25 Q. When did you work together on the authentication?

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1 A. Well, the Hurst and the Lucia's cellar were playing  
2 Connoisseur Wine Imports off against Draper & Esquin to see  
3 which one could get the biggest price.

4 Q. Who ended up winning the bid?

5 A. Jerry Draper did.

6 Q. So your client didn't get the wine?

7 A. No. My clients just owned The Chronicle.

8 THE COURT: Just owned the newspaper?

9 THE WITNESS: Yes.

10 BY MR. MOONEY:

11 Q. But you were involved and did do the authentication for  
12 your client?

13 A. Yes.

14 Q. Did you find any significant problems with that collection?

15 A. We didn't find any authentication problems in terms of  
16 whether the wines were legitimate. It was a kind of cellar we  
17 always hoped for because there was complete documentation of  
18 purchase records on all of these wines over what had been a  
19 very long 30 or 40 years. We did have some issues with proper  
20 storage. So there was a --

21 THE COURT: Issues with what?

22 THE WITNESS: Proper storage. Unfortunately, certain  
23 cases of wine had been stacked on their sides instead of  
24 upright and, consequently, you had spoiled bottles. So part of  
25 this was to examine large quantities of the expensive wines in

Dc5dkur2

Collins - direct

1 order to ascertain the value.

2 THE COURT: And what exactly did you do to  
3 authenticate those wines?

4 MR. MOONEY: I was just about to ask you to go through  
5 his process, your Honor.

6 THE COURT: I'm sorry.

7 MR. MOONEY: As long as you want to set the historic  
8 stage.

9 Q. One more question before we go there.

10 THE COURT: Yes.

11 A. Sure.

12 Q. Did you just stop after 1985, or did you continue to do  
13 this authentication on behalf --

14 A. I continued to do it. Actually, shortly after the Lucia  
15 cellar, Jerry Draper hired me back from Connoisseur Wine  
16 Imports and thus ended the battle between the two companies.

17 Q. Now, walk us through -- first of all, when you are looking  
18 at a bottle of wine, you are looking to authenticate it is one  
19 of the things, is that correct?

20 A. Yes.

21 Q. To see if it is what it purports to be?

22 A. Yes.

23 Q. Then you are also inspecting the wine with regard to its  
24 viability and whether it has been perhaps ruined by something  
25 that happened?

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1 A. Yes.

2 Q. OK. So would you tell us now what you do, how you go about  
3 doing an authentication and verification of the viability of a  
4 bottle of wine?

5 A. Sure.

6 THE COURT: Actually, would it be OK if he described  
7 what he did in that 1985 project, as a live example?

8 MR. MOONEY: Yes.

9 Q. Why don't you tell us what you did at the Lucia, at the  
10 collection?

11 A. Well, sure. One of the key items in that cellar was if  
12 there was --

13 THE COURT: In that what, cellar's list?

14 THE WITNESS: In the cellar itself was an authentic  
15 case of 1945 Romanee-Conti Romanee-Conti. This was in an  
16 original carton.

17 THE COURT: I don't mean to be dense, but when you say  
18 cellar, do you mean seller or cellar?

19 THE WITNESS: Cellar like a physical --

20 THE COURT: Downstairs.

21 THE WITNESS: Go downstairs and here's the wine.

22 THE COURT: OK. So you found problems in the cellar  
23 are you saying?

24 THE WITNESS: Yes. The problem simply was there was  
25 so much wine the cases had been -- unfortunately had been

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1 stacked for long periods of time where you would have six  
2 bottles facing down, in which case the corks would stay wet --

3 THE COURT: The corks would what?

4 THE WITNESS: The corks would stay wet and the wine  
5 would stay -- would be sound, and then you would have bottles  
6 that had faced upright for years and they would show the signs  
7 of ullage.

8 THE COURT: The signs of?

9 THE WITNESS: Ullage of the wine.

10 Q. What does ullage mean?

11 THE COURT: How do you spell that, first?

12 THE WITNESS: U-l-l-a-g-e.

13 THE COURT: And that means what?

14 THE WITNESS: That is the level of the wine from the  
15 cork to the wine itself.

16 BY MR. MOONEY:

17 Q. Yes. And when wines are packed in a case, are they  
18 traditionally interlaced so that they go back and forth in  
19 different directions?

20 A. That is correct.

21 Q. So when you stand the case -- and the case is meant to lay  
22 on its side so that everything, there is liquid against all of  
23 the corks, is that correct?

24 A. That is correct.

25 Q. If you stand it up on its end, half of it is going to have

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1 no liquid against the cork; is that what you are telling us?

2 A. Yes.

3 Q. Why is it important to have liquid against the cork?

4 A. Well, because that is the seal. If the cork is allowed to  
5 dry out from the inside, then the wine will go bad.

6 Q. So that was one of the problems that you found?

7 A. That was one specific problem in this cellar, yes.

8 Q. That is not an authentication problem, that is a viability  
9 problem?

10 A. That's correct. There is sort of a procedure that you go  
11 through for authentication that I think is somewhat similar in  
12 a lot of cases.

13 So when I am looking at a bottle of wine, here's the  
14 bottle of wine. You take a look at the bottle of wine. The  
15 first thing I am looking at is I am looking at the label  
16 because this is telling me what the wine purports to be.

17 THE COURT: So you start either for viability or for  
18 authentication with the label; is that what you are saying?

19 THE WITNESS: The first thing I look at is the overall  
20 visual of the bottle.

21 But the first thing that I focus on, I kind of do -- I  
22 have an order of events that I kind of do this in where I try  
23 to repeat the same -- the same method each time, because then  
24 when it becomes years later and I am looking at something else,  
25 you know, that I'm not forgetting something, that I am doing

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1 all of the things in order.

2 THE COURT: OK.

3 THE WITNESS: So for me the first order of events is I  
4 look at the label. What I'm looking at on the label, I say,  
5 OK, it is identifying what this is supposed to be as a wine.

6 I am looking at the condition of the label. We're  
7 usually talking about this on older wines and rare wines.  
8 There is a relatively short list of wines that we are  
9 continually doing these kind of authentications for. I look at  
10 the paper quality versus what the vintage is, that I think they  
11 are -- I look for deterioration around the label edges. I look  
12 for the way that the label is cut, whether the label -- whether  
13 the label appears to be stamp-cut or whether it appears to be  
14 cut out with scissors.

15 I'm looking at -- to go in a case of the 1945 Domaine  
16 de la Romanee-Conti, there is three inks on this label so you  
17 look at each one of the inks individually. In the case of  
18 these domain wines you also have a serial number. So we are  
19 looking, and I copy down the serial number. And I am looking  
20 for -- there is a lot of times you look for auxiliary  
21 identification marks. There is -- in burgundy there is a  
22 printer that is used frequently by the domains. They have a  
23 small stamp on the right. So these --

24 THE COURT: They have a small stamp?

25 THE WITNESS: Yes. They have their name in very, very

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1 small letters, about 2-point letters, that are down on the  
2 right-hand corner of the label.

3 THE COURT: They would be the names of?

4 THE WITNESS: The name of the printer.

5 A. After I've done that and after what I've done through  
6 Draper & Esquin is I take a photograph of the front of the  
7 bottle and --

8 Q. Why do you take a photograph?

9 A. Well, because when I am going through this after the fact  
10 with the notes, there may be something that I can't remember  
11 for sure that I can identify with the photograph. And, also,  
12 it provides an identification process for me to corroborate  
13 some notes. And so --

14 Q. After you take the photograph, what next then?

15 A. Pardon?

16 Q. What next happens? You have taken the photograph. Where  
17 do you go next?

18 A. OK. Then I proceed to the -- I proceed up the bottle. The  
19 next thing I look at is ullage. That is the distance between  
20 the cork and the wine. I usually --

21 THE COURT: So you now have the bottle in an upright?

22 THE WITNESS: Yes. That's right.

23 And you are looking at the ullage for a couple of  
24 reasons. One is that you look at this to see if it seems to  
25 correspond with the age of the wine. A bottle of wine that's

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1 been aging for 40 or 50 years is going to have a decreased  
2 level because of certain -- there is a certain amount of  
3 natural evaporation that happens.

4 THE COURT: You mean more space between the cork and  
5 the top of the wine?

6 THE WITNESS: Precisely. Precisely.

7 You also have, from that period, place, you have an  
8 opportunity to look at the glass of the bottle from the top  
9 part. So I like to -- I look around that because I can see  
10 light through it. I'm looking for bottle identifications,  
11 seams, and that's the manner in which the bottle has been put  
12 together.

13 Q. What do seams tell you?

14 A. Well, the seams will tell me a lot of times what era -- in  
15 a very wide sense, what era the bottle of wine would come from.

16 Q. The bottles were made in different ways at different times?

17 A. Pardon?

18 Q. The bottles have been made in different ways at different  
19 times?

20 A. Exactly.

21 Q. I'm sorry. Go on.

22 A. On older bottles of wine, I look for air imperfections and  
23 so forth, which are signs of hand-blown bottles, which were  
24 used frequently prior to World War II.

25 And then I take the bottle and I tilt it back

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1 slightly. I use a light to shine up to the cork from  
2 underneath. This affords me a look at the cork if the wine  
3 hasn't been -- if the capsule hasn't been taken off or  
4 otherwise changed.

5 THE COURT: I am sorry. You are shining a lot on the  
6 bottle now?

7 THE WITNESS: Yes. Through the neck of the bottle to  
8 the bottom of the cork.

9 THE COURT: OK. And to do --

10 THE WITNESS: One of the things I look for there is  
11 color, because if the bottle has been -- if the wine has been  
12 in the bottle for a very long time, that cork will be a  
13 darker -- a dark color. If you are seeing a cork that is light  
14 colored and it is an old bottle of wine, then that usually  
15 indicates at some point it has been recorked or that it in some  
16 other ways has been changed.

17 Then at the same time after that I look down and you  
18 can see the color of the wine through the top of the neck.  
19 Usually this is the easiest place to check the color.

20 Again, you are checking the color in kind of an  
21 overall sense. If it is an old bottle of wine you are  
22 expecting it not to be bright red, for example, and you are  
23 also able to look for what I call mare's tail, which is a  
24 sediment --

25 THE COURT: Spell it.

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1                   THE WITNESS: M-a-r-e-s, mare's tail, which is like a  
2 sediment that forms along the back of a bottle after it is laid  
3 down for a long period of time, and you can see a little bit of  
4 what the sediment is.

5                   From there I shift my light down to the punt of the  
6 bottle.

7 Q. What is the punt?

8 A. The punt is the indentation at the bottom of the bottle.  
9 And the -- I'm looking -- I'm trying to look through the edge.  
10 I look again for color but, more importantly, I look for stone  
11 sediment.

12                  THE COURT: I'm sorry. You look for what?

13                  THE WITNESS: Sediment. Again, an older bottle of  
14 wine -- particularly older bottles of wine, there wasn't a lot  
15 of filtration that was done in those days so you usually see  
16 significant deposits down there if the bottle of wine is old.

17                  At that point then you turn the bottle onto its back.  
18 I examine the bottom of the bottle. There I'm looking at, you  
19 know, I'm looking for a shape. Again, there is real deep punt  
20 bottles that come out of the era between World War I and World  
21 War II and go into the '40s that have a certain shape.

22                  There is also codes on the bottom of the bottles from  
23 manufacturers. And when those are available --

24                  THE COURT: What?

25                  THE WITNESS: I'm sorry?

Dc5dkur2

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1 THE COURT: I didn't hear what you just said.

2 THE WITNESS: Oh, on bottles since World War II, a lot  
3 of the manufacturers had put a bottle code into their glass  
4 when they manufacture the bottle. So I look for that for a  
5 couple of reasons. Particularly if I am looking at more than  
6 one bottle from a particular wine, I look at that to see if  
7 it's consistent. And in some cases you can actually look at  
8 the code and ascertain, you know, whether it came from a  
9 specific winery.

10 This happens more with California wines because the  
11 California manufacturers for years actually vintage dated their  
12 glass. So you knew that you had -- if you had a 1978 wine, it  
13 would be put in a 1979 bottle, this kind of thing. And the  
14 burgundies and the bordeaux's it is much less consistent. But  
15 nonetheless, all of those are more checklist, you know, there  
16 are more things on this list.

17 After that we're looking general shape of the bottle.  
18 We are back to the -- we come back out and take another view.

19 And then we proceed to the opening, which we've got a  
20 capsule and a cork, and we look at the markings on the capsule.  
21 Sometimes I measure this -- if it seems unusual, in the case of  
22 some wines where you are really trying to make sure that they  
23 are authentic, you peel back the tin of the capsule. You look  
24 at the markings that are on -- that are visible or not visible  
25 on the cork. And in general you examine the capsule for signs

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1 that it's been adulterated in any way.

2 There is numerous ways this could happen. One is the  
3 wine has been recorked at some point because the wine is  
4 getting too old and the cork is giving out. Some properties  
5 will recork wines, actually, before they sell older wines.

6 But most of the earlier recorkings that we saw from  
7 the '70s, a frequent method of authenticating the cork on those  
8 was is they took the old cork and they wrapped it in a twine  
9 and they actually embossed the twine over the top of the  
10 bottle. This is the ideal situation because you have the old  
11 cork as well as the new cork if you look at it. But in a less  
12 than ideal situation, you are trying to examine as much as you  
13 can this cork without taking it out of the bottle to give you  
14 signs of -- you know, to give signs of authenticity.

15 THE COURT: I'm sorry. To take it out of the bottle  
16 in order to get signs of authenticity?

17 THE WITNESS: Yes. The issue is a lot easier with  
18 bordeaux wines, where there have been frequent cork brandings  
19 for a long period of time and so that you will have an  
20 identification on the cork of a chateau and a vintage, and this  
21 is what you are hoping to see.

22 In burgundies it is a lot more complicated because  
23 there is a long period of time where people just used a generic  
24 cork. This is partially because the burgundies don't have one  
25 chateau but they have a lot of different properties. So they

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would either have a blank cork or the frequent ones that I have seen are corks that are branded mise en bouteille au chateau.

It means bottled at the domain or bottled at the property.

THE COURT: OK. By the way, when you start, do you take a bottle at random out of a case, or is there a test bottle, so to speak?

THE WITNESS: It depends on the carton. You know, if we are looking at original cartons -- let's say we are opening it up and it looks like it hasn't been opened before or the wine hasn't been disturbed from the original carton, then you have multiple examples here, and so you use one at the top. But also you can -- you could go down to the second level and take another bottle to just see if it conforms with the first bottle. Unfortunately, solid cases of things, when they are 50 or 60 years old, are rare, and so most of these, they are individually done as here's the bottle, here's second bottle. You look at them on a case-by-case basis.

THE COURT: Did you ever open the bottle? I guess you can't do that, right?

THE WITNESS: Actually, there was a lot of bottles opened in the old days.

THE COURT: You do what?

THE WITNESS: It wasn't just because we drank a lot. It was based on -- the auction houses back in the '70s used to put on these kind of tastings, the ones that I attended a lot

Dc5dkur2

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of times were for trade, and you had an opportunity to taste all sorts of things, which gave you a big leg up on how good this particular sale was going to be, this particular cellar.

THE COURT: How did you know what you were tasting?

THE WITNESS: How did I know what I was tasting?

THE COURT: Yes.

THE WITNESS: Past experience.

THE COURT: No. No. I don't mean that. I mean, did someone tell you that this is the same wine that is in the bottle in that case, or there is just wine on the table and you taste it?

THE WITNESS: No. They would bring out bottles of wine on the table, and then we would open them up and it would go that way.

Any one of these private cellars are a good example when there is a lot of wine is I will go through randomly and I'll choose bottles out of different cases and we'll do a tasting. You know, where it involves a lot of money, I want to get some idea as to not just the authenticity of certain things but, also, I want to get an idea of the provenance, which, you know, whether those wines have been in fact in a proper storage condition for their -- most of their lives or whether they haven't.

THE COURT: Which of those at the terms, provenance or authenticity, describes whether it is counterfeit or not?

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1                   THE WITNESS: Oh, the authenticity is what determines  
2 whether it is counterfeit or not.

3                   THE COURT: It is the authenticity?

4                   THE WITNESS: Yes. The provenance, you could have  
5 wines that have bad provenance that yet are also authentic.

6                   THE COURT: Right. So one is upright instead of on  
7 its side could be of good provenance. But I'm still trying to  
8 figure out how you know if it is authentic or not, or, more  
9 particularly, how do you know if it is counterfeit or not?

10                  THE WITNESS: Without tasting the wine?

11                  THE COURT: Is there any way --

12 Q. The process. As a result of this process, then how do you  
13 determine if a wine is questionable or not authentic?

14 A. Well, all of those things that I sort of checklisted, I  
15 listed. That sort of for me becomes here's the pluses, here's  
16 the minuses. And, you know, my recommendation then would be  
17 based upon, you know, how many different things that I thought  
18 were inconsistent with what that wine should look like or  
19 should be and how many things did I look at that say those are  
20 consistent with what that wine should be.

21 Q. For example, you are looking at an old wine that has what  
22 appears to be a new cork.

23 A. Yes.

24 Q. Does that necessarily mean that the wine is not authentic?

25 A. That doesn't necessarily mean that it's not authentic, but

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1 it works against it quite a bit in terms of my recommendation.  
2 Your risks are much higher.

3 Q. Was there a lot of recorking that went on in the '70s?

4 A. The main place there was recorking was there was wine firms  
5 in England that regularly recorked wines before they sent them  
6 out. We had a lot of issue with those particular wines because  
7 they would frequently top those out before they recorked them.

8 Q. What does that mean?

9 A. It means that they would add more wine to bring the levels  
10 up in all of the bottles. If you are doing that properly, you  
11 are taking a bottle -- you are taking a sacrificial bottle from  
12 the wine and topping with the exact wine.

13 The issue that we had on this process with one or two  
14 wine firms was that they weren't -- that they were using wines  
15 that weren't the wine that was being topped up and in which  
16 case, you know, they were adulterating the wine. They were  
17 essentially invalidating the wine.

18 Q. What sort of things would you see on the label that would  
19 cause you to question the authenticity of a wine?

20 A. Well, aside from the paper quality, which is a key one --

21 THE COURT: Did you say "paper quality"?

22 THE WITNESS: Paper quality, yeah. That you -- if you  
23 have a bottle that's had its label on it for a long period of  
24 time, the label is going to have -- is going to age similar to  
25 like if you sat a piece of paper into the cellar and 50 years

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1 later you are looking at the piece of paper.

2 I look at the print particularly and, you know, at the  
3 imagery that's on the label. I look for color contrast in  
4 these processes, which are frequently not as clear on labels  
5 that have been reproduced.

6 Q. Will you sometimes compare pictures you have taken to known  
7 images of what the label is supposed to look like?

8 A. Yes. For example, with a 45 Mouton Rothschild, this  
9 catalog has a series of all of the artist labels in it.

10 THE COURT: All of the what?

11 THE WITNESS: All of the labels -- standard different  
12 label every year that was attributed to a certain artist.

13 THE COURT: Artist?

14 THE WITNESS: Yes. And those -- so, I mean, also, we  
15 had, like every other wine importing company in the United  
16 States at the time, we had large files of labels from these  
17 properties, because we were required by the federal government  
18 to submit label approvals, you know, to import the wines, and  
19 so the chateaus and the domains would supply us with. When I  
20 was on the -- when I was on these vining trips, you know, I  
21 always was picking up labels so that I would have them when I  
22 got back to use for label approvals.

23 Q. Would other importers in the United States have been  
24 required to have copies of the labels as well?

25 A. Yes. The way the law worked was that any importer had to

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1 have -- at that time, back in the '70s and '80s and '90s, you  
2 had to do your own label approval with the federal government.  
3 You couldn't -- you could use someone else's label on a customs  
4 clearance if you had a letter. Each time you had to get a  
5 separate letter that it said it's OK for someone to use this  
6 label approval, but every company basically did this process  
7 themselves.

8 THE COURT: So did I understand that in 1985 you  
9 recommended to your client not to purchase that wine?

10 THE WITNESS: On the ones with the --

11 THE COURT: No, that is just a question. Is that  
12 true?

13 THE WITNESS: With Connoisseur Wine Imports? We  
14 basically got our bid.

15 THE COURT: So you did bid?

16 THE WITNESS: Oh, yes. But you were running a tally  
17 sheet. Here's the bottles we're not going to get very much  
18 money for, here's the ones that we are going to get a lot of  
19 money for. You know, where do we draw this line where we --  
20 you know, how much money are we willing to invest on it?

21 THE COURT: Why did you decide to bid?

22 THE WITNESS: Pardon?

23 THE COURT: I say, why did you decide to bid at all?

24 THE WITNESS: Oh, because a lot of wines in the  
25 collection were very rare and very unique and there was a ready

Dc5dkur2

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1 client base for them.

2 THE COURT: And what did you find when you did your  
3 authentication?

4 THE WITNESS: Of overall for the cellar, you mean?

5 THE COURT: Well, specifically and overall, yes.

6 THE WITNESS: Specifically, I found that the  
7 authentication of the wines was pretty close to impeccable.

8 What I found --

9 THE COURT: Because?

10 THE WITNESS: Was impeccable.

11 THE COURT: How was it impeccable?

12 THE WITNESS: In that I was able to take -- I was able  
13 to take written documents that were available on the desk and  
14 down there and match them with the wine and say, look, here's  
15 when it was imported, here's when it was purchased. And, you  
16 know, this is an unusual circumstance. Everybody doesn't keep  
17 records as well as --

18 THE COURT: How about all of those other things that  
19 were part of your test?

20 THE WITNESS: Of when we are doing the inspection?

21 THE COURT: Yes.

22 THE WITNESS: That was -- the major issue was the  
23 percentage of wines that either weren't going to?

24 A. Be sellable because they had gone over the hill or they  
25 were ones that should have been drunk --

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1                   THE COURT: They were what?

2                   THE WITNESS: They were wines that should have been  
3 drunk decades before, or they were ones that fell into these  
4 cases where you had -- where you had some bottles were stored  
5 properly, some bottles were not stored properly. So it  
6 developed into -- it was a lengthy process because there was a  
7 lot of money that was going to be involved in those. And that  
8 was probably -- at one point there is a stop loss. You just  
9 say I'm not -- we can't afford to pay more than this because we  
10 are not likely to re-- you know, we are not likely to make a  
11 profit on it.

12                  THE COURT: But that is a failed cost/benefit  
13 analysis, right?

14                  THE WITNESS: Sure.

15                  THE COURT: I am talking about your process of  
16 authenticating the wine itself, not how much profit you could  
17 make or --

18                  THE WITNESS: Sure. In that cellar the authentication  
19 went relatively smoothly, you know, because I didn't have to  
20 spend as much time going through all the cases if you opened up  
21 a case that had never been opened and there is the first  
22 bottle; you look at it that way.

23                  THE COURT: What did you do? That is what I am  
24 saying.

25                  THE WITNESS: Yes. The number of cellars like this

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1 that I have had the occasion to authenticate and to work with  
2 since 1985 has been extremely small. This is -- it is more  
3 like a historical anecdote, this particular cellar, as opposed  
4 to what we go through today.

5 The frequent situation today on this authentication is  
6 that we are presented with bottles of wine via an auction house  
7 or a private collector that we have no records substantiating a  
8 background. And in the case of auction houses, we don't  
9 have -- the auction house doesn't divulge where the wines came  
10 from and so the authentication process becomes a lot more  
11 severe because you don't have the benefit of knowing exactly  
12 where the wine has been all its life.

13 BY MR. MOONEY:

14 Q. Have you found wines in the work that you have done for  
15 your clients that you have recommended against their purchase  
16 because you think the authentication is in question?

17 A. Yes. Lots of wines.

18 Q. And comparing what you found in the 1970s to the '80s and  
19 the '90s and then on up through, what is the frequency that  
20 you've seen of questionable bottles?

21 A. The frequency has increased -- it's increased tenfold.

22 It's been from where the -- the first cellar that I really ran  
23 into an authentication problem was in Switzerland in 1978, when  
24 I --

25 THE COURT: 1978?

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1                   THE WITNESS: 1978, when I had the consultant  
2 business. I was going to broker that cellar through an auction  
3 house in London and a retail -- and Draper & Esquin, a retail  
4 store in San Francisco.

5                   THE COURT: And which?

6                   THE WITNESS: And the retail store of Draper & Esquin.

7 Q. What happened?

8 A. Well, the cellar was a disaster. Everything I had been  
9 told was going to be there was different than what it was.

10                  There was a lot of storage. It was supposed to -- it  
11 was represented to me as a famous person's cellar. It became a  
12 large question in my mind who actually even owned the wine.  
13 And, more importantly, all of the wines that we were being  
14 supplied -- that I had been supplied on the list, nothing --  
15 nothing matched.

16                  THE COURT: Nothing matched with what?

17                  THE WITNESS: If it said there was going to be a 1945  
18 Lafite, you would look and there was no 1945 Lafite. It would  
19 be 1946 Lafite, or there would be no Lafite at all. So this  
20 cellar opened my eyes quite a bit to, you know, what the  
21 downside of all of this rare wine business could be because I  
22 couldn't get out of the place fast enough. But this --

23 Q. Did you find bottles you believed to be counterfeit in the  
24 course of that inspection?

25 A. From the list that I was provided, I found multiple bottles

Dc5dkur2

Collins - direct

1 that I didn't think were -- what they said was right.

2 THE COURT: Wait a minute. I don't know what that  
3 means.

4 They didn't match -- this didn't match -- wait a  
5 minute.

6 THE WITNESS: When I went there, they supplied me  
7 beforehand -- the reason I went to the trouble to go to the  
8 trip was they supplied me with a list that had all of these  
9 rare wines on it that were available.

10 THE COURT: OK.

11 THE WITNESS: This is similar to in a large -- this is  
12 the way I received the Lucia cellar is exactly the same way.  
13 You know, I was brought this list of, you know, we have all of  
14 these things, and, you know, you start out from there.

15 THE COURT: And so the list didn't match the  
16 bottles -- the labels, I guess?

17 THE WITNESS: Yeah. I don't think -- I would --  
18 immediately looked at some things and said, well, you know,  
19 this can't be an 1870 Lafite even if it doesn't have a label on  
20 it because the bottle is way too modern, you know. That was  
21 the first tipoffs.

22 And at the same time that was -- when we were doing  
23 cellars in England --

24 THE COURT: We are in that Switzerland -- you know,  
25 that was your first incident, right --

Dc5dkur2

Collins - direct

1           THE WITNESS: That's correct.

2           THE COURT: -- of problems?

3           THE WITNESS: That's correct.

4           THE COURT: And I am trying to figure out what that  
5 problem was.

6           THE WITNESS: Well, there was a lot of wine here that  
7 was going to be tried to be sold for something that I couldn't  
8 believe that it was.

9           THE COURT: I'm trying to figure out how you came to  
10 the conclusion it wasn't what it said it was?

11          THE WITNESS: The authentication process that I was  
12 referring to, if the first three bottles that I did that, you  
13 know, let's say, the run through, nothing matched.

14          THE COURT: I don't know what that means. Nothing  
15 matched. What didn't match with what?

16          THE WITNESS: The label would say 1945. The bottle  
17 didn't match. The cork had no -- it had no identification on  
18 it. There would be a property or you would expect that there  
19 would be a cork identification. The label itself looked  
20 remanufactured. The -- you know, the inks weren't -- you know,  
21 the inks weren't sharp.

22          THE COURT: The inks weren't sharp?

23          THE WITNESS: Yes.

24          THE COURT: But these are old bottles, right?

25          THE WITNESS: These are old bottles.

Dc5dkur2

Collins - direct

1                   THE COURT: Do you think they should be sharp?

2                   THE WITNESS: Yes. Because I think the method of  
3 imprintation, of imprinting the label, is that you get a clear  
4 ink read. And what you see on one set of copied, that they  
5 don't have a clear ink read, that you are not seeing any -- you  
6 are not seeing any distance between the paper and the ink in  
7 terms of there is no sharp edge which would be created by  
8 printing.

9                   THE COURT: So you rejected on behalf of your buyer  
10 that Swiss purchase, is that right, or the proposed --

11                  THE WITNESS: Yes. This whole purchase I totally  
12 rejected, yes.

13                  THE COURT: And just to again sum up, you rejected it  
14 because specifically what was wrong with what you saw?

15                  THE WITNESS: I specifically rejected it because the  
16 bottles of wine that were represented as bottles of a certain  
17 chateau and a certain vintage bore no resemblance to previous  
18 bottles of those chateaus and those vintages that I had seen.

19 BY MR. MOONEY:

20 Q. You talked about one of the things that you looked at as  
21 being the capsule?

22 A. Yes.

23 Q. What does the capsule consist of?

24 A. It's the covering of the cork on the top of the bottle.

25 Q. And what form does that come in?

Dc5dkur2

Collins - direct

1 A. In the older bottles it is lead, a ball of wax.

2 Q. Do you see modifications that are sometimes made to the  
3 capsule after the bottles went to the chateau?

4 A. Yes.

5 Q. Does that necessarily mean that the wine itself is not  
6 authentic?

7 A. The modifications to the capsule don't work in the wine's  
8 favor.

9 Q. Do people commonly add wax to the bottle?

10 A. Well, I've seen this in cellars in California. If you have  
11 a wine cellar and you are not planning to market it, there is  
12 people that do this to maintain the quality level of the wine  
13 if they have a problem with a cork leaking, for example, or  
14 things like this.

15 Q. And if a cork is leaking, is one of the remedies to --

16 A. Yes.

17 Q. -- increase the wax?

18 A. Yes.

19 Q. Now, over the years, as you've attended these auctions, you  
20 said that you've seen questionable wines that have shown up in  
21 the market.

22 A. Yes.

23 Q. All right. And you testified that that was an increasing  
24 issue, is that fair?

25 A. Yes.

Dc5dkur2

Collins - direct

1 Q. Have you seen the same bottles of questionable wine showing  
2 up time after time?

3 A. Yes.

4 MR. HERNANDEZ: I object. I ask for clarification of  
5 what that means, "the same bottles."

6 THE COURT: That's fine.

7 A. Yes. Sure.

8 Q. Any incidents you can give of where you saw a wine  
9 bottle -- tell us an incident where you again had identified  
10 wine as being questionable or counterfeit and then you saw it  
11 again?

12 A. There is a lawsuit that's on right now concerning a bottle  
13 of 1945 -- a magnum of 1945 Domaine de la Romanee-Conti,  
14 Romanee-Conti.

15 Q. Without identifying the parties in the lawsuit, had you  
16 previously seen that bottle?

17 A. Exactly. There were two magnums and one jeroboam of that  
18 wine that were imported in California in 1998. They were  
19 imported through a company for a retail account, and I was  
20 called on to look at these bottles of wine, and I'd ascertained  
21 that they were fake.

22 THE COURT: They were what?

23 THE WITNESS: That they were fake.

24 THE COURT: Fake?

25 THE WITNESS: That they were counterfeit.

Dc5dkur2

Collins - direct

1           THE COURT: And this was when?

2           THE WITNESS: This was in 1998.

3           THE COURT: You looked at these bottles in 1998?

4           THE WITNESS: In Oakland, California, yes.

5           THE COURT: In Oakland, California?

6           THE WITNESS: Yes.

7           THE COURT: And you determined that they were fake?

8           THE WITNESS: Yes.

9           One of these bottles is this bottle that has shown up  
10          on this recent lawsuit. It has exactly the same strip label on  
11          it. There is a strip label that is the identification of the  
12          importer.

13           THE COURT: And where is the bottle now?

14           THE WITNESS: Where is it now?

15           THE COURT: Yes.

16           THE WITNESS: It is in the court somewhere, I believe.

17           THE COURT: Where?

18 Q. This bottle is subject --

19           THE COURT: No. Where is it now?

20           THE WITNESS: I don't know. I am not involved in that  
21          lawsuit.

22           THE COURT: I. Know, but how do you know that it is  
23          the same bottle that you saw?

24           THE WITNESS: The position of the strip --

25           THE COURT: Have you looked at it?

Dc5dkur2

Collins - direct

1                 THE WITNESS: I didn't look at it this year. I looked  
2 at it in 1998.

3                 THE COURT: I understand. So how do you know that the  
4 bottle in this lawsuit, whatever it is, is the same bottle?

5                 THE WITNESS: Because of the identification, because  
6 of the photograph that was circulated in the news has the  
7 import strip label on it.

8                 THE COURT: So you saw a photo --

9                 THE WITNESS: Yes, I have.

10                 THE COURT: -- of this litigated bottle?

11                 THE WITNESS: Yes.

12                 THE COURT: You said that is a bottle that you had  
13 seen in 1998 in Oakland, is that right?

14                 THE WITNESS: That is correct.

15                 THE COURT: And how did you draw that conclusion?

16                 THE WITNESS: Because there is not an import label  
17 from somebody that normally imports this wine. This was  
18 something that was done as a private-party importation. So it  
19 has a strip label that would be considered unique for this  
20 particular wine.

21                 I probably went into this -- there is -- the reason  
22 that I also think that the wine is fake, or a counterfeit, is  
23 because it's 1945 Romanee-Conti, and it's my opinion that there  
24 was never anything larger than a bottle ever produced in this  
25 wine.

Dc5dkur2

Collins - direct

1           THE COURT: I'm trying to figure out how you know the  
2 bottle you saw in Oakland is the same as the bottle --

3           THE WITNESS: Well, without examining it in person, I  
4 don't know a hundred percent.

5           THE COURT: Ah.

6           THE WITNESS: But the preponderance of evidence is  
7 that that strip label, located exactly in the same place of  
8 that label of that bottle of wine, would be the same bottle of  
9 wine.

10          THE COURT: And what does that say?

11          THE WITNESS: It said it is imported by the firm that  
12 handled the importation.

13          THE COURT: So you think it can only be one bottle in  
14 the world --

15          THE WITNESS: I think there is three, and this is one  
16 of them, the three that I examined.

17          THE COURT: Were those the only three that there could  
18 be of that?

19          THE WITNESS: They are not evidently the only three  
20 that are for sale. If we went to London right now, there is  
21 evidently somebody that claims to be selling one also.

22          THE COURT: So how do you know that what you saw is  
23 not the one in London?

24          THE WITNESS: Then I would say that all of these that  
25 we are referring to are counterfeit.

Dc5dkur2

Collins - direct

1                   THE COURT: So now there are how many of them?

2                   THE WITNESS: The only ones I know are these three  
3 that I've actually physically examined. But as is the case of  
4 counterfeiting wine, that quantity could change in a moment's  
5 notice.

6                   The reason that I feel strongly about that particular  
7 bottle of wine is two-fold. One is is that there is a wealthy  
8 collector in Silicon Valley that purchased the jeroboam and  
9 opened it and told me it was fake.

10                  THE COURT: He told you it was fake?

11                  THE WITNESS: Yes.

12                  And, secondly, the wine happens to be the wine of my  
13 birth year. And when I went to Domaine de la Romanee-Conti in  
14 1976, I specifically inquired about all of the 1945 vintages of  
15 the wine. And most -- the cellar master at the time -- it is  
16 in my notebook, I specifically wrote down that, and I  
17 specifically asked whether there were larger formats of the  
18 wine. There was only two barrels of the wine made. It was  
19 never sold commercially. It was sold to private parties that  
20 were collectors and friends of the domain in 1947/'48.

21                  The one case that I referred to that was in the Lucia  
22 collection is one of the few cases of wine, one of the few  
23 examples of wine that I've ever actually seen.

24                  The bottle of -- the Romanee-Conti was picked two days  
25 after I was born. So I kind of was trying to collect things

Dc5dkur2

Collins - direct

1 like this for my own personal cellar. But I had to settle for  
2 a Laroche which was actually picked the day I was born, or it  
3 is the other way around. I don't know whether -- which came  
4 first.

5 BY MR. MOONEY:

6 Q. Mr. Collins, given the state of the market, do you have an  
7 opinion as to what the risk is for a buyer if they just go out  
8 into the market and start buying wines from auctions and  
9 private cellars to end up with counterfeit wines?

10 A. Well, it depends on -- it depends on what wine we are  
11 talking about. If you talking about you want to start buying a  
12 lot of wines that cost less than a hundred dollars, I would say  
13 your risks are pretty low. If we are talking about these  
14 same --

15 THE COURT: And why would the risk be low if it is  
16 under a hundred dollars?

17 THE WITNESS: Well, it would be like a currency  
18 counterfeiter making pennies when they could make  
19 hundred-dollar bills. You know, there is not a lot of  
20 authenticity problems with inexpensive wines from burgundy or  
21 bordeaux.

22 THE COURT: It sounds like you are saying that there  
23 is not a lot of upside in selling cheap wines but --

24 THE WITNESS: Well, there is a lot of upside to it if  
25 you are a consumer, if you are actually drinking the wine.

Dc5dkur2

Collins - direct

1                   THE COURT: I'm trying to figure out -- I still don't  
2 get why wine that's \$100 or less is less likely, in your  
3 opinion, to be counterfeit.

4                   THE WITNESS: Well, because I think if someone was to  
5 sit here and decide to counterfeit a bottle of wine and they  
6 had a choice between making a \$5,000 bottle of Petrus out of it  
7 or they could choose an Ol Muli in a lesser vintage that they  
8 would at the most get \$50 for, that they would choose to  
9 counterfeit the Petrus.

10                  THE COURT: So you're saying more likely it would be  
11 counterfeit because there is a bigger upside in the resale, not  
12 because necessarily the wine is or isn't what it purports to  
13 be?

14                  THE WITNESS: Precisely.

15 BY MR. MOONEY:

16 Q. Are there particular domains that are more commonly found  
17 in counterfeit than others?

18 A. Yeah.

19 Q. What would those be? Give us some examples.

20 A. Well, an example would be Chateau Petrus, which is probably  
21 one of the most -- it is a small domain, small chateau, and the  
22 production is limited. And it was popularized by the press in  
23 the '70s and '80s, and it achieved a very high price. And I've  
24 seen more examples of counterfeit bottles of Chateau Petrus  
25 than I have of any other chateau.

Dc5dkur2

Collins - direct

1                   THE COURT: And where did you see them?

2                   THE WITNESS: Oh, the home for a lot of them used to  
3 be Las Vegas. I used to sell wines to casinos in Las Vegas,  
4 and the running joke amongst the sommeliers down there was two  
5 out of every three bottles of Petrus were fake.

6                   THE COURT: But that's what they told you, right?

7                   THE WITNESS: Yeah. There is people like master  
8 sommeliers like Raj Parr, P-a-r-r, that have written this in  
9 Spectator articles. There is --

10 Q. Did you also see questionable bottles?

11 A. Yes.

12                   THE COURT: Where?

13                   THE WITNESS: Where? In MGM Grand, specifically in  
14 that casino. But that's because I knew the wine director. So  
15 we were looking at these -- there was a case where they used  
16 the bottles to reward people who lost a lot of money on the  
17 tables so they can flip open the thing and say, here, we're  
18 going to open a \$10,000 bottle of wine for you.

19                   There was three bottles of Petrus that had been  
20 ordered by this one customer. One of the bottles was rejected.  
21 We actually tasted the dregs of all three bottles, and the  
22 bottle that was rejected we thought was the real one and the  
23 two that were accepted were the phony ones.

24 BY MR. MOONEY:

25 Q. And are there any other domains that are particularly

Dc5dkur2

Collins - direct

1 subject to counterfeiting?

2 A. Well, the largest single worldwide problem right now is  
3 Chateau Lafite Rothschild.

4 Q. Where is that a problem?

5 A. It's a huge problem in China.

6 Q. How do you know that?

7 A. Well, I worked -- I have a client that worked directly with  
8 in Shanghai.

9 THE COURT: You have a client who what?

10 THE WITNESS: That I worked directly with in Shanghai,  
11 and there is a series of collectors that I work directly with  
12 one person whose name is Lloyd Sun.

13 THE COURT: Have you been to China?

14 THE WITNESS: No. We were on our way -- I was going  
15 to China to authenticate this auction in last April. It was a  
16 Christie's auction, but then they told everyone that no one was  
17 going to be able to examine the bottles.

18 THE COURT: So have you ever authenticated any wine in  
19 China?

20 THE WITNESS: Not in physically -- not in physically  
21 in China. I've photographed, yes.

22 THE COURT: You've authenticated wine that was, what,  
23 for sale in China?

24 THE WITNESS: Yes. I've rejected bottles of wine that  
25 were for sale in China.

Dc5dkur2

Collins - direct

1           THE COURT: I'm not understanding you.

2           THE WITNESS: Oh --

3           MR. HERNANDEZ: Your Honor, may I just ask Mr. Collins  
4 either sit a little closer to the microphone? There are parts  
5 of the testimony where he fades out.

6           THE WITNESS: Sorry.

7           MR. HERNANDEZ: Thank you.

8           THE COURT: I'm just trying to understand. You said  
9 the biggest problem or the big problem of counterfeit wine is  
10 in China today, right?

11          THE WITNESS: That is one of them, yes.

12          THE COURT: I thought you said that was a big one.

13          THE WITNESS: Well, for this particular chateau,  
14 that's for sure the biggest. I will go with it is the biggest.

15          THE COURT: But you have never been to China?

16          THE WITNESS: I have not.

17          THE COURT: And you have never authenticated any wine  
18 in China?

19          THE WITNESS: Not in China per se, no.

20          THE COURT: So you don't know directly whether any  
21 wine in China is or isn't --

22          THE WITNESS: No. I've looked at bottles of wine that  
23 have been brought back from China, yes.

24          THE COURT: So explain that.

25          THE WITNESS: They will --

Dc5dkur2

Collins - direct

1                   THE COURT: How did that happen?

2                   THE WITNESS: The client I deal with, Lloyd Sun, he  
3 has a cellar both in Los Angeles and down in Chinatown. So  
4 wines are transferred back and forth.

5                   THE COURT: OK. So what were the circumstances?

6                   THE WITNESS: I'm sorry?

7                   THE COURT: What were the circumstances? What did you  
8 do with respect to --

9                   THE WITNESS: He brought back a bottle of Lafite to  
10 show me one that was available at a restaurant there.

11                  THE COURT: Was it a bottle that was full or a bottle  
12 that was empty?

13                  THE WITNESS: No. It was one that was full. We did  
14 the same authentication that I just listed.

15                  THE COURT: I'm sorry?

16                  THE WITNESS: I did the same procedure that I just  
17 listed to look at this, and we didn't think it was a real  
18 bottle.

19                  THE COURT: OK. Why not?

20                  THE WITNESS: The way the printing was on the label  
21 didn't appear to be consistent with Chateau Lafite labels. The  
22 bottle didn't appear to be -- it had a flatter base to it, so  
23 it didn't appear to be a bottle that would be consistent with  
24 what Chateau Lafite would use.

25                  The cork -- we didn't pull the capsule so the capsule

Dc5dkur2

Collins - direct

1 was generic. We did not have a Chateau Lafite stamp on it.

2 Those alone would be enough --

3 THE COURT: Those what?

4 THE WITNESS: Those reasons alone would raise more  
5 than one red flag at this point.

6 THE COURT: OK. I'm sorry to interrupt, counsel. We  
7 are going to soon have to --

8 MR. MOONEY: I understand.

9 THE COURT: -- give the government a chance.

10 MR. MOONEY: Yes. I'll wrap up.

11 BY MR. MOONEY:

12 Q. Have you had an opportunity to review some of the wine  
13 bottles that are involved in this case?

14 A. Yes.

15 Q. When did you get a chance to do that?

16 A. Yesterday.

17 Q. OK. And do you have any preliminary -- were you able to  
18 conclude your examination and feel comfortable with the end  
19 results, or do you still have more work you are going to do?

20 A. Well, I haven't -- I haven't compiled everything at this  
21 point. I am comfortable with having successfully done an  
22 examination of all of the bottles that were there.

23 Q. Do you have a preliminary conclusion with regards to the  
24 bottles that you saw, as to whether there are counterfeits or  
25 whether they are authentic wines?

Dc5dkur2

Collins - direct

1 A. There is a high percentage of probability that there is  
2 numerous counterfeit wines in the wines that I reviewed.

3 (Continued on next page)

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DC5KLIR3

Collins - direct

1 Q. In your opinion, though, would somebody buying in the open  
2 market end up with a high percentage of counterfeit wines in  
3 their cellars?

4 A. Buying these sorts of --

5 Q. These sorts of wines?

6 THE COURT: Not sorts, but which bottles did you look  
7 at, the bottles in this case?

8 BY MR. MOONEY:

9 Q. The bottles in this case?

10 A. Yes.

11 THE COURT: You think there is a high probability  
12 they're counterfeit?

13 THE WITNESS: I have to continue, complete the report  
14 on every single thing, but there is certainly numerous bottles  
15 in there that I believe are counterfeit.

16 THE COURT: There are?

17 THE WITNESS: Yes.

18 THE COURT: How many did you look at?

19 THE WITNESS: What was the total? 51, wasn't it?

20 THE COURT: Do you recall?

21 THE WITNESS: I don't know the exact number. I've got  
22 it -- they wouldn't allow us to bring in a commuter.

23 THE COURT: Do you have a rough idea if there is one  
24 or 10?

25 THE WITNESS: Number of counterfeits?

DC5KLIR3

Collins - direct

1                   THE COURT: Number of bottles, first of all, you  
2 examined?

3                   THE WITNESS: I think there was around 50.

4                   THE COURT: You examined?

5                   THE WITNESS: Yes.

6                   THE COURT: This was yesterday?

7                   THE WITNESS: Yes.

8                   THE COURT: As best you understand, how many would you  
9 say of the 50 were counterfeit?

10                  THE WITNESS: Well, there were a few issues that I  
11 wanted to follow up some investigation on, and then I haven't  
12 completely compiled it, but I would say 80 percent would be  
13 that I think are counterfeit.

14                  THE COURT: Why?

15                  THE WITNESS: I did each bottle the way that I  
16 explained, and what I did at the end of each examination is I  
17 marked basically pluses and minuses for the different things  
18 that we would be looking at, and the ones that had a lot of  
19 minuses, you would -- there were wines that if, if I was  
20 examining this, this bottle of wine for a client that I have  
21 that was looking to purchase it, I would say well, I would  
22 reject this bottle of wine because it has too many issues.

23 BY MR. MOONEY:

24 Q. Are the reasons you would reject these the same for every  
25 bottle across the board or do they vary from bottle-to-bottle?

DC5KLIR3

Collins - direct

1 A. They vary. They didn't vary necessarily from  
2 bottle-to-bottle within the same exact wine, but they did vary  
3 from bottle-to-bottle if you're looking at different lots.

4 Q. If we were going to go into an individual evaluation of  
5 each of these, we would be here for quite some time? You can  
6 discuss it --

7 A. Not as long as I was there looking at them.

8 THE COURT: Is it fair to say that if somebody were  
9 your client who were looking to buy those wines, the wines that  
10 are --

11 THE WITNESS: I would recommend against a large  
12 percentage.

13 THE COURT: The wines in this case?

14 THE WITNESS: Yes.

15 THE COURT: From what you saw, would you recommend  
16 your buyer buy any of them?

17 THE WITNESS: Yeah, there is bottles of wine that I  
18 think -- two recommendations. There is bottles of wine that I  
19 think are authentic. If that was the goal of the client, then  
20 I would recommend buying it.

21 THE COURT: How much? How many?

22 THE WITNESS:: I am sorry, I just haven't worked  
23 through the whole report. There is maybe, maybe 7 or maybe 10  
24 I can think of for sure I can say are authentic.

25 Again I would like to do that on a case-by-case and

DC5KLIR3

Collins - direct

1 see if my numbers change any. I didn't finish each examination  
2 with the idea of drawing an overall graph of this particular  
3 situation because the bottles are very different from each  
4 other. There is different issues with different bottles.

5 There is one or two lots that I suspect might be  
6 authentic.

7 THE COURT: You suspect are authentic?

8 THE WITNESS: Yeah. I need to do a little more  
9 research in terms of when a domain name became in use. Some of  
10 the bottles of wine that are in this case -- do you want me me  
11 to be specific?

12 THE COURT: I am trying to figure out, so if you have  
13 a client, and you went yesterday and did that examination, I am  
14 trying to figure out from what you saw, whether or not you  
15 would recommend to your client to buy any of that wine or some  
16 of it or all of it?

17 THE WITNESS: If we're talking about the kind of  
18 client that I like to have here who is looking to buy wine to  
19 drink it, then I would say that there is virtually none that I  
20 would recommend buying.

21 THE COURT: None?

22 THE WITNESS: None because some of these wines,  
23 specifically old white wines, I don't believe that those  
24 wines -- if those wines are authentic, then they are no longer  
25 good to drink and they should have been consumed a long time

DC5KLIR3

Collins - direct

1 ago.

2 In fact, we were talking about one of the chateaus a  
3 moment ago, and I look at a lot of these older bottles of wine  
4 that are for sale, and right now all of them are all over the  
5 internet and in these auctions. I would recommend to my  
6 clients against buying any of them not just because they might  
7 not be authentic, but because if they are authentic, they're  
8 going to be over the hill. They're not going to be drinkable  
9 wine.

10 THE COURT: So again what is your assessment of what  
11 you saw yesterday in terms of what you would recommend to a  
12 client, buy or not buy?

13 THE WITNESS: If they want to buy because they wish to  
14 own a certain label and they want an authentic bottle, then  
15 there are authentic bottles.

16 If they want to buy because they want to have a great  
17 bottle of wine to drink tomorrow night, I recommend against  
18 virtually all of them.

19 THE COURT: Virtually all of them?

20 The ones you would recommend that they could buy to  
21 put on a shelf, so to speak, is that what you're saying?

22 If you can't drink it, you're still going to recommend  
23 they buy?

24 THE WITNESS: I can come up with a long list of other  
25 things I would spend the money on besides a bottle of wine that

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Collins - direct

1 is no good, that you would sit on a shelf.

2 THE COURT: But you're saying there are maybe some of  
3 those that you saw yesterday?

4 THE WITNESS: That are no good, you mean?

5 THE COURT: I don't know. You're the --

6 THE WITNESS: Without the use of a cork screw, I would  
7 say it would have been a tough day to open up a lot of those  
8 bottles of wine and find one of them was good.

9 THE COURT: Virtually none would be good to drink, and  
10 I am still trying to figure out how many you think were  
11 authentic?

12 THE WITNESS: Well, again I am not exactly sure of the  
13 percentage. Let's say 10 percent, 15 percent. Again one of  
14 the wines has a specific vineyard reference to it that -- it is  
15 a wine originally imported by Esquin in 1951 prior to this  
16 merger, prior to them moving on to another importer 20 years or  
17 30 years later. It uses a name for a specific ancient domain.

18 THE COURT: Ancient?

19 THE WITNESS: There is a domain reference, okay, for  
20 the vineyard, okay?

21 If the vineyard reference was used and bottles of wine  
22 imported by Esquin, John Esquin, from George Roumier in the  
23 start of this company in 1951-52, I owned two bottles that  
24 originally came out of there from 1945 vintage that were not  
25 labeled with the current domain name, but were labeled with

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Collins - direct

1 this ancient domain name.

2 So I know there is an interrelationship there from the  
3 old days at Esquin. The reason I can't speak with certainty on  
4 that, on these particular bottles, is because I don't know  
5 whether the label I photographed was actually a label that was  
6 used by any of three people, either John Esquin, Harleys of  
7 Bristol or George Roumier. I don't know that for sure.

8 I have a few places I might be able to look that up to  
9 confirm. So that is why there is this questions in my mind on  
10 certain issues. There are other wines in here that there is no  
11 question in my mind that they wouldn't pass the muster as I  
12 would give it for the clients that I represent.

13 THE COURT: Okay. Is that it, Mr. Mooney?

14 MR. MOONEY: No more, your Honor.

15 THE COURT: Okay.

16 CROSS-EXAMINATION

17 BY MR. HERNANDEZ:

18 Q. Good afternoon, Mr. Collins.

19 A. How do you do?

20 Q. You understand that the reason that you're here is that you  
21 may be testifying as an expert in a criminal trial of Mr.  
22 Kurniawan. You understand that, right?

23 A. Yes.

24 Q. You understand one of the roles of an expert testifying who  
25 is to offer their opinions about certain matters that maybe the

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Collins - cross

1 jury needs expert guidance on?

2 A. Yes.

3 Q. So the first thing I want to do is ask you to identify for  
4 us all of the opinions that you've formulated based on your  
5 examination of everything and everything in this case.

6 A. You're specifying the only actual examination that I have  
7 done of anything in this case is the bottles of the wine that I  
8 was able to examine yesterday.

9 Q. I understand that. Next week you may be testifying in this  
10 trial and offering opinions about certain facts and evidence.  
11 All I'm trying to do is get a catalog from you, a list of what  
12 those opinions are.

13 One of them you just mentioned is 80 percent of the  
14 wine you examined yesterday is fake.

15 A. Ah-huh.

16 Q. That is a opinion of yours, correct?

17 A. Yes.

18 THE COURT: Is that your statement, 80 percent is fake  
19 from what you saw yesterday?

20 THE WITNESS: At this moment I'd say that is very  
21 close.

22 THE COURT: Did you also say, if I understood, a  
23 hundred percent you would recommend to a client not to buy if  
24 their sole purpose was to drink it?

25 THE WITNESS: That's correct.

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Collins - cross

1           THE COURT: Right?

2           THE WITNESS: Yes.

3           THE COURT: So there is some percentage that you might  
4 recommend that a client buy if what they wanted to do was to  
5 put it up on a shelf?

6           THE WITNESS: That's correct.

7           THE COURT: As to that percentage, the shelf  
8 percentage, you haven't finished your investigation as to  
9 whether you'd make that recommendation, either?

10          THE WITNESS: Yeah, I'd like to firm up. There is a  
11 little bit of research that I would like to do before I make my  
12 opinion exactly this way or exactly that way. I am not  
13 positive on one, particularly one particular wine.

14          No, on the basis of my examination yesterday, I'd say  
15 that is an accurate representation of my opinion.

16 BY MR. HERNANDEZ:

17 Q. So that is one of your opinions, Mr. Collins. What other  
18 opinions do you have in this case?

19 A. Well, indeed, another opinion that I have is based on these  
20 wines where this is particularly unique to the situation that I  
21 see in the marketplace or whether it is commonplace.

22           THE COURT: I didn't understand that.

23 BY MR. HERNANDEZ:

24 Q. We don't understand. Can you explain what you mean by  
25 that.

DC5KLIR3

Collins - cross

1 A. As time has gone on here over the 35 years, more and more  
2 I've been asked to examine bottles of wine that they think are  
3 counterfeit. The current clients that I have right now, you  
4 know, have asked me to pre-authenticate things that they're  
5 thinking of purchasing.

6 There is the overall auction marketplace to me offers  
7 ample opportunity to purchase counterfeit wines because they're  
8 the kinds of authentication processes that everybody used 30  
9 years ago are not being applied.

10 There was a recent auction in China that I was asked  
11 about different wines, and by the sheer, by the sheer  
12 appearance of the bottles and the photographs and the catalogs,  
13 I would have rejected those bottles of wine.

14 Q. What time period do you attribute the spike in counterfeits  
15 in the market to?

16 A. It has kind of gone in spurts. I think there was a large  
17 spike in counterfeits in the 80's, and I think there was a very  
18 large spike in counterfeits in the 90's.

19 Q. How about 2004 to 2012?

20 A. I don't think -- we are looking at this from overall world  
21 position, I think there has been unabated spike in counterfeits  
22 over that period of time also.

23 Q. What other opinions do you have?

24 A. In relationship to?

25 Q. Any opinion you intend to offer in this trial?

DC5KLIR3

Collins - cross

1 A. Well, I believe I'm in this trial to base opinions on the  
2 bottles of wine that we just examined. I think that is my  
3 primary --

4 Q. We have that, your opinion about those bottles. Anything  
5 else? It is okay if you have two opinions. You don't only  
6 have to have one?

7 A. Sure, I understand that. Generally the opinions that I've  
8 expressed today about the overall situation in the marketplace  
9 would be opinions that I would have that might or might not be  
10 applicable to this trial.

11 THE COURT: So the opinions, the opinion that you have  
12 that is directly applicable to this trial is that the wine you  
13 examined in this trial is, by and large, you would not  
14 recommend that any of your clients buy?

15 THE WITNESS: That's correct.

16 BY MR. HERNANDEZ:

17 Q. So, Mr. Collins, we have your opinion about the bottles you  
18 examined and we have your opinion about the increasing number  
19 of fake wines in the market, I'll use that as my shorthand.

20 Are there any other opinions you intend to offer in  
21 the trial?

22 A. The only other opinions that I think might be useful is  
23 whether the authentication process that I am involved in, and I  
24 am involved with in certain clients right now is preemptive,  
25 and when this marketplace might be quite a different if people

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Collins - cross

had exercised the same kind of diligence in pre-authenticating these large purchases before they make them.

Q. Do you understand this is a criminal case, right?

A. Pardon?

Q. Do you understand this is a criminal case, right?

A. I understand it is a criminal case.

Q. Do you have any other opinions besides those that you listed that you intend to offer at trial?

A. None that I am aware of.

Q. Do you have an opinion about whether or not the defendant counterfeited any wine?

A. I am sorry?

Q. Do you have an opinion about whether or not the defendant, Rudy Kurniawan, counterfeited any wine?

A. No.

THE COURT: By the way, excuse me, do you know him?

THE WITNESS: I've met him twice.

THE COURT: When was that?

THE WITNESS: Once three years ago he attended a dinner that I was at, and I am sorry I don't remember the exact date, I put on a German wine tasting about 7 years ago or 8 years ago that he attended.

THE COURT: Did you meet him? Those are the only times you've ever met him?

THE WITNESS: Those are the only times I have met him.

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Collins - cross

1                   THE COURT: And the circumstances of your meeting was  
2 for what?

3                   THE WITNESS: I am sorry?

4                   THE COURT: You were just at the same dinner or you  
5 talked or you conversed?

6                   THE WITNESS: We conversed very little. On the German  
7 wine tasting, I don't think we conversed at all. He was with a  
8 group of other people that attended the tasting, and on the  
9 other dinner I can think of, there was five or six people  
10 attending that dinner that had a lot of opinions, so I don't  
11 think he expressed very much. We didn't have any direct  
12 conversations of substance.

13                  THE COURT: Do you have any understanding of who he is  
14 and what he does?

15                  THE WITNESS:: Do I right now?

16                  THE COURT: Did you either time you met him?

17                  THE WITNESS: Sure.

18                  THE COURT: What is that?

19                  THE WITNESS: My opinion of?

20                  THE COURT: Who he is?

21                  THE WITNESS: Well, it was a fellow that was a large  
22 wine collector, invested a lot of money in wine in that period  
23 of time.

24                  THE COURT: In which period of time?

25                  THE WITNESS: In that decade, the decade of, say

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Collins - cross

1 let's -- I don't know the exact dates, but 2001 to 2010,  
2 something like that.

3 THE COURT: So you knew him to be a large wine  
4 collector?

5 THE WITNESS: Yes, that was his reputation, yes.

6 MR. HERNANDEZ: I should have asked before, but is it  
7 possible to turn on the Elmo to see an exhibit. Is that all  
8 right?

9 THE COURT: Yes, sure. Is it plugged in?

10 MR. HERNANDEZ: It would be a good thing to check.

11 (Pause)

12 THE COURT: Did you understand Mr. Kurniawan to do the  
13 same kinds of work in the wine industry that you did?

14 THE WITNESS: Not really. I mean we didn't have any  
15 of the same clients, if that was the question?

16 THE COURT: Do you think he had the same understanding  
17 of wine that you did? Or the same degree of knowledge?

18 THE WITNESS: Without seeming egotistical, I've been  
19 at it for a long time. Opinions are like noses when it comes  
20 to wine, everybody has one, but I feel confident in my own.

21 THE COURT: In your own opinion?

22 THE WITNESS: Expertise in this area.

23 THE COURT: I see.

24 BY MR. HERNANDEZ:

25 Q. Mr. Collins, I asked you whether you had an opinion whether

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Collins - cross

1 or not the defendant made counterfeit wines and you said no,  
2 correct?

3 A. That's right.

4 Q. No opinion?

5 A. That's right.

6 Q. Are you aware that the government has several boxes worth  
7 of evidence that it alleges were used to counterfeit some of  
8 the very same wines that you examined yesterday?

9 A. The only way I would be aware of that as something I've  
10 read in the paper.

11 Q. As you sit here today, are you aware the government has  
12 alleged that it has boxes upon boxes of evidence to support  
13 that the defendant counterfeited wines?

14 A. Counterfeited wines that it has, the boxes, I am aware of  
15 that.

16 Q. As you sit here today, were you aware of that?

17 A. Yes.

18 Q. Were you aware of that yesterday before you started the  
19 examination?

20 A. Yes.

21 Q. Wouldn't it have been helpful for your examination for you  
22 to look at that evidence?

23 A. I did the examination as cleanly as I could. I didn't  
24 review any of the documents that I guess I'm supposed to review  
25 here concerning the other expert testimony and so forth.

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Collins - cross

1 Q. That is not what I am asking you about, Mr. Collins. I  
2 want to make sure -- I don't want to cut you off. I want to  
3 make sure you understand the question. The government alleges  
4 it has, for example, thousands of wine labels that were used to  
5 replicate the same bottles you examined. You didn't ask to see  
6 those yesterday, did you?

7 A. No. They weren't available to me. I only looked at what I  
8 was told that I could look at.

9 Q. Would it be helpful for you to look at those?

10 A. Well, I don't know that it would change the evaluation when  
11 I did my examination.

12 Q. How could it not?

13 A. Well, there could be a bottle, a label sitting in this book  
14 that wouldn't change my evaluation of the bottle, one way or  
15 another.

16 Q. Without examining the evidence, it is your judgment now  
17 that there is no need to look at the evidence, it couldn't help  
18 you, is that your answer?

19 A. If you want me to look at it and render an opinion, I could  
20 do that.

21 Q. Mr. Collins, I don't want you to testify in this trial so,  
22 no, I don't want you to look at the evidence. I am asking you,  
23 have you already determined that evidence would not be helpful?

24 A. You're asking --

25 (Multiple voices)

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Collins - cross

1 Q. Let me start again. Mr. Collins, do you understand we have  
2 moved to exclude your testimony, right?

3 A. I am sorry?

4 Q. We have moved to preclude you from testifying in this  
5 trial. You understand that, right?

6 A. Yes.

7 Q. My question to you is, have you already determined that it  
8 would not be helpful to your examination to examine the  
9 evidence the government claims it has that supports the  
10 counterfeiting allegations in this case?

11 A. Well, I don't understand that I have been -- that that is  
12 what the requirement is for me in this case. We're going into  
13 a whole other area from up my expertise is. You're asking me  
14 to make an opinion about evidence I haven't seen and whether  
15 this would change my opinion on things.

16 The answer is no, I don't know that things I haven't  
17 seen would change my opinion on things that I've seen.

18 THE COURT: Because from what you've already seen, you  
19 would recommend to a client a hundred percent not to buy the  
20 wine. Isn't that right?

21 THE WITNESS: Yeah. I don't understand why people  
22 would want to buy a lot of these wines out of auction in the  
23 first place.

24 THE COURT: I got it.

25 THE WITNESS: Everybody has can do their own thing

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Collins - cross

1 here, but the clients that I have and the position that I take  
2 on this is you're asking me to render an opinion, and that  
3 opinion is going to be based on the review that I just made.

4 THE COURT: Based on that, you would tell your client  
5 don't buy this wine?

6 THE WITNESS: I would.

7 THE COURT: Right. Do you have any -- I forget if you  
8 said -- never mind. That is fine.

9 We could probably move on because he has already  
10 concluded that this.

11 MR. HERNANDEZ: We will move on. May I approach? I  
12 have a couple of bottles to show to Mr. Collins?

13 THE COURT: Sure.

14 (Pause)

15 BY MR. HERNANDEZ:

16 Q. Mr. Collins, you have before you two bottles, one that is  
17 Government Exhibit 8-31, says it is a 1949 Domaine Ponsot, Clos  
18 Saint-Denis.

19 A. I am sorry? The one here?

20 Q. Correct. Do you see the sticker on it that says --

21 A. This says --

22 Q. I am sorry?

23 A. What did say the name of the wine was?

24 Q. Clos Saint-Denis. Does that say Clos Saint-Denis?

25 A. You have made a mistake. This is Clos de la Roche,

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Collins - cross

1 according to the label.

2 Q. I am sorry.

3 A. According to the label.

4 Q. Understood. There is the second bottle. Let's talk about  
5 the second bottle.

6 A. Sure.

7 Q. That says it is a Roumier 1923 Bonnes-Mares, Government  
8 Exhibit 72, correct?

9 A. Yes.

10 Q. Did you examine -- talk about 72, the Roumier bottle. Did  
11 you examine that bottle yesterday?

12 A. Well, I don't have my notes here,. Your government exhibit  
13 was what I coded all of my stuff off of. I am pretty sure this  
14 is one of the bottles I examined.

15 THE COURT: The one on your left you think you  
16 examined yesterday?

17 THE WITNESS: Yeah.

18 THE COURT: Would it --

19 THE WITNESS: Without benefit of notes, yes. There  
20 was more than one bottle than this.

21 MR. MOONEY: For assistance of the Court, Mr. Collins  
22 made all of his notes on the computer. Our printer we tried to  
23 set up today didn't work.

24 THE COURT: Okay.

25 MR. MOONEY: His notes are in the hotel room because

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Collins - cross

1 they're outside the exclusion zone.

2 THE COURT: I see. Okay.

3 MR. HERNANDEZ: It is not a memory test.

4 THE COURT: Yes. You should understand that we're  
5 just trying to ask you about your best recollection.

6 THE WITNESS: Sure. I understand perfectly.

7 BY MR. HERNANDEZ:

8 Q. Mr. Collins, with respect to that particular wine --

9 A. Yes.

10 Q. -- would you tell us where else in the marketplace you have  
11 seen 1923 Roumier Bonnes-Mares that has, you see in the middle  
12 of the label it says Domaine Belorgey?

13 A. Yes.

14 Q. Where else have you seen that wine?

15 A. I have never seen it, a 1923 bottle of Bonnes-Mares labeled  
16 with this name in the marketplace.

17 Q. Until yesterday?

18 A. Well, I can't see it in the marketplace, yes.

19 Q. That is the first time you have seen that bottle?

20 A. That's correct.

21 Q. Do you see that to be one of the fakes that you saw?

22 A. Yeah. To try to get to the bottom of the mystery isn't  
23 easy in this era of wine because you have a lot of records that  
24 have been gone by the wayside.

25 The reason, the reason this intrigued me was because

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Collins - cross

of the name the ancient Domaine Belorgey, okay. My experience with that name came from old bottles of Esquin wine that existed when this merger happened.

There was a catalog, old Esquin catalog that identified the ancient Domaine Belorgey as being Domaine Roumier. It also identified a particular Cuve of Bonnes-Mares that was under a Harleys of Bristol label as being Domaine Roumier. This would have not been unusual in that era for there to be multiple ways the wines had been labeled.

The bottle of wine I got from Esquin that I drank in 1945 did not have this label. It had a different label, had a squarish label that identified itself specifically as Domaine Belorgey.

THE COURT: The one you drank?

THE WITNESS: That's correct. The one I have actually physically seen before now did not have this particular label.

THE COURT: The one you drank, do you think was a genuine article?

THE WITNESS: Yeah. I also think it was a label that came through Esquin, and unfortunately the people who would know the exact answer on this are no longer living.

We imported, you understand that Esquin was the importer for Domaine Roumier for up until 1977. You know that, right?

THE COURT: Well, he is trying to ask you if you could

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Collins - cross

1 figure out if that bottle on your left in front of you is fake  
2 or not fake?

3 THE WITNESS: There is some real, I think there is  
4 some -- I would feel a lot stronger about it if I could find an  
5 example of this particular label in old Esquin documents or  
6 things like that. If you are saying okay, you have to make the  
7 decision right this moment?

8 THE COURT: Yes, if you did, and I was your client,  
9 would you recommend that I buy that?

10 THE WITNESS: I wouldn't recommend buying it because I  
11 don't personally think a 1923 bottle of any Bonnes-Mares is any  
12 good any more. That would be the reason I wouldn't buy it.  
13 That would be reason No. 1.

14 No. 2, if you were saying do I really want to take a  
15 chance with Roumier, I would say that this label is  
16 inconsistent with any label I've ever seen of Domaine Roumier,  
17 although the names are correct, and -- well, this was a  
18 different model, again looking for the reference of the paper  
19 and so forth but, no, if I had to make a recommendation right  
20 this second you are going to write the check or not write the  
check, don't write the check.

22 BY MR. HERNANDEZ:

23 Q. Don't write the check because it is fake or some other  
24 reason?

25 THE COURT: Red flags?

DC5KLIR3

Collins - cross

1                 THE WITNESS:: It is in my zeroes and pluses I was  
2 talking about, this one has some zeroes.

3 BY MR. HERNANDEZ:

4 Q. Mr. Collins, isn't it true that the first year that Domaine  
5 Roumier made a Bonnes-Mares with the vines from the Domaine  
6 Belorgey was 1952?

7 A. No.

8 Q. That is false?

9 A. That's correct.

10 Q. Why do you think that is false?

11 A. Because it was imported by Esquin starting with the 1945  
12 vintage referenced. There is -- now, you can say well, you  
13 know, the Christophe could tell you something different.

14                 My relationship with Roumier goes back to Jean Re and  
15 his father, okay?

16                 The confusion to the answer to that question is were  
17 they renting the grapes prior to purchasing them? This is not  
18 an unusual situation. Were they marketing Belorgey for the  
19 family?

20                 I don't know the exact circumstances of that, but I do  
21 know there were names that uses the ancient Domaine Belorgey  
22 shipped from Roumier prior to what was the year 1952.

23 Q. Mr. Collins, isn't it true that 1924 was the first year  
24 that Domaine Roumier bottled wine and sold commercially?

25 A. Well, again, I am not positive of that because without --

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Collins - cross

1 how I used to look up things like this, years ago in the City  
2 Hall where you see things are referenced. There is a reference  
3 in review -- to wine du Burgundy written by Camille Dubey 1920  
4 premier edition lists some of the owners of the properties.

5 Belorgey is listed as owner of the property. Roumier  
6 was not. Roumier was not included in the list any time through  
7 the publication of that book which the last time it was  
8 published was 1948.

9 Q. Do you know who Clive Coates is?

10 A. Do I know who Clive Coates is? Of course!

11 Q. Do you know who he is?

12 A. Yeah.

13 Q. He is a master of wine, right?

14 A. Yes.

15 Q. Considered one of the most knowledgeable people about  
16 burgundy, isn't he?

17 A. He is one of the knowledgeable people.

18 Q. One of the most knowledgeable, isn't he?

19 A. How do you want to measure knowledge?

20 Q. He wrote a seminal book on Burgundy Cote D'Or. It is over  
21 900 pages long, right?

22 A. Yes.

23 Q. A standard reference for people who want to learn about  
24 burgundy, isn't it?

25 A. One of them.

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Collins - cross

1 Q. It is one of the standard references?

2 A. Yes.

3 Q. It is this book, right?

4 A. Yep.

5 Q. In this book there is a profile of Domaine Roumier, and it  
6 says the nucleus of the domaine lies in the dowry of Genevieve  
7 Quanquin, Q U A N Q U I N, who married George Roumier in 19124.  
8 It also says that the domaine was further enlarged in the  
9 1950's before Bonnes-Mares from Domaine Belorgey arrived in  
10 1952. You're saying that is wrong?

11 A. Well, I am saying that a bottle labeled as Domaine Belorgey  
12 arrived in Esquin, it was dated 1945. Whether that was  
13 something George Roumier did for John Esquin to obtain  
14 something else for them to sell, I don't know.

15 The only reference I had to it -- I looked into these  
16 bottles of wine because I had a chance to own one, to drink  
17 one, and so this is all very curious to me. I never brought  
18 this subject up with Jean Roumier because I didn't know that  
19 this would ever be quite such an issue.

20 Q. The last question about the Roumier.

21 A. Sure.

22 Q. You have never in the marketplace seen that label, though,  
23 anywhere, right?

24 A. Well, how do you mean?

25 THE COURT: He means before yesterday?

DC5KLIR3

Collins - cross

1 THE WITNESS: 1923?

2 BY MR. HERNANDEZ:

3 Q. That is that bottle right there?

4 THE COURT: That label on that bottle?

5 THE WITNESS: No.

6 BY MR. HERNANDEZ:

7 Q. I will show you 8-24. This is finally the 1959 Domaine  
8 Ponsot, Clos Saint-Denis. Is that a bottle you examined  
9 yesterday?

10 A. Yep.

11 Q. Before yesterday how, many bottles of pre-1982 Domaine  
12 Ponsot Clos, Saint-Denis have you seen in the marketplace?

13 A. Zero.

14 Q. Are you familiar with a collector named Pat Hendra?

15 A. No.

16 THE COURT: By the way, do you recall seeing that  
17 bottle yesterday?

18 THE WITNESS: Yes.

19 THE COURT: The one on the right now?

20 THE WITNESS: Yes, this one here.

21 THE COURT: On your list of what you'd recommend to me  
22 or -- not me or a buyer, would you recommend he buy that  
23 bottle?24 THE WITNESS: No, I wouldn't recommend you buy any of  
25 the bottles of Ponsot.

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Collins - cross

1           THE COURT: Any of them?

2           THE WITNESS: No. All of the ones that were, all of  
3 the ones that were presented yesterday had severe issues.

4           THE COURT: Going to their authenticity, as you said  
5 before?

6           THE WITNESS: Yes.

7           THE COURT: Going to their provenance, as you said  
8 before?

9           THE WITNESS: No, much more authenticity, every single  
10 one of the bottles that was presented to me yesterday with this  
11 particular name on it.

12          THE COURT: The one on your right hand?

13          THE WITNESS: Yes, the Ponsot, right, you had the list  
14 there, correct, it was 12 or 14 bottles, there was one of them  
15 that was -- one was a Magnum, it had a strip labeled Esquin  
16 Imports. I know for a fact Esquin never imported any wines  
17 from Domaine Ponsot. Domaine Ponsot was imported by a wine  
18 merchant who was a competitor. That strip label never would  
19 have been attached to that bottle of wine. We wouldn't have  
20 bought wines out of auction.

21          In the case of this bottle and in the case of the Clos  
22 de a Roche, the same thing, they all appear to be of the same,  
23 labels all appear to be the same run.

24          THE COURT: The same run?

25          THE WITNESS: Yeah, they all appear to be newer labels

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Collins - cross

1 that perhaps were a stack of labels that came from Ponsot or  
2 perhaps there were a stack of labels that came from an importer  
3 or anybody. The only differentiation I could find in the  
4 labels were some were a little smudgier than others.

5 This one is a perfect example because this one is  
6 labeled as (French). The way I identified the bottles that I  
7 explained earlier, every one of these came up with failing  
8 marks.

9 THE COURT: With fail marks?

10 THE WITNESS: Failing marks.

11 THE COURT: They were suspect?

12 THE WITNESS: Highly -- without -- I don't think there  
13 would even be a need to open any of these wines to declare them  
14 all counterfeit.

15 THE COURT: You don't think there would be a need to  
16 open any of those wines to declare them all counterfeit, is  
17 that what you said?

18 THE WITNESS: That's correct.

19 THE COURT: Could I just see counsel for a minute at  
20 the sidebar.

21 (At Sidebar)

22 THE COURT: Let me just understand sort of the optics.

23 You want him to testify that all of the wine he saw  
24 yesterday, or most of it, there is a high degree of probability  
25 is counterfeit?

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Collins - cross

1 MR. MOONEY: That's correct.

2 THE COURT: You think that helps you?

3 MR. MOONEY: We do. We do. Part of it, part of what  
4 his use is, and we get dribbles and drabs with regard to Egan,  
5 we got the latest stuff on Egan yesterday.

6 THE COURT: Egan?

7 MR. MOONEY: Their expert. He is largely our rebuttal  
8 witness to talk about changes, different things than Egan says  
9 about these particular bottles, they be counterfeits, but there  
10 is information about the bottles and about what he sees in them  
11 we think might be helpful to the jury to understand.

12 THE COURT: I am trying to figure out what that is.

13 For this witness -- now talking sort of as a  
14 disinterested observer -- how does it help you for him to stand  
15 up and say these wine are all counterfeit?

16 MR. MOONEY: Because it goes to not whether they're  
17 counterfeit or not, but it goes to whether or not perhaps our  
18 client was the one that counterfeited them or somebody else  
19 counterfeited them.

20 THE COURT: But he has no knowledge of that.

21 MR. MOONEY: Certainly he can't testify to that. He  
22 can testify to what he sees on the bottles and he can testify  
23 to the different things that are present there.

24 MR. HERNANDEZ: He doesn't want to look at the  
25 evidence.

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Collins - cross

1           THE COURT: I got that.

2           MR. MOONEY: We are not asking him to do that.

3           MR. HERNANDEZ: I will do it.

4           MR. MOONEY: You gave it to us yesterday in terms of  
5 Egan doing it yesterday, yesterday, I got that.

6           MR. HERNANDEZ: Absolutely not true.

7           THE COURT: So you want to press forward and him  
8 declared an expert?

9           MR. MOONEY: That's correct.

10          THE COURT: Even though he's going to testify that all  
11 of these wines are counterfeit, which is, of course, the  
12 government's principal accusation, Count No. 1 is, right, that  
13 is true, too?

14          MR. MOONEY: Yes.

15          THE COURT: He also has no idea one way or another  
16 whether your client counterfeited these bottles.

17          MR. MOONEY: We don't know for sure we'll use him.

18          THE COURT: That is why I am having trouble  
19 understanding.

20          MR. MOONEY: If I don't have my own expert, I am stuck  
21 with only what they give.

22          THE COURT: Or cross-examination?

23          MR. MOONEY: Or cross-examination. If the  
24 cross-examination -- and you know as well as I do I get stuff  
25 on cross-examination and then I am stuck with not being able to

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Collins - cross

1 put on anybody to say that is nonsense.

2 THE COURT: Okay.

3 MR. MOONEY: If I don't have my own expert to be able  
4 to potentially come in, like we said originally, we didn't, we  
5 didn't know that -- we didn't expect he would disagree with  
6 everything that Egan said, but --

7 THE COURT: Putting that aside, though, I want to make  
8 sure you want him to testify knowing that really his sole  
9 opinion here is that they are counterfeit and certainly with a  
10 hundred percent that he wouldn't tell anybody to buy these, and  
11 he doesn't know who counterfeited or where the problem comes  
12 from.

13 MR. MOONEY: He is saying 80 percent of them are  
14 counterfeit.

15 THE COURT: And 20 percent he wouldn't buy to drink.

16 MR. MOONEY: Absolutely wouldn't buy to drink.

17 THE COURT: Or a hundred percent.

18 MR. MOONEY: Not the same as being counterfeit.

19 THE COURT: I get that. Even as to the 20 percent, he  
20 is not really sure in some instances.

21 MR. MOONEY: He hasn't finished his work.

22 THE COURT: Why? And you think that is helpful?

23 MR. MOONEY: I think that is helpful because there  
24 won't be a question -- look, we would probably stipulate to a  
25 lot of the wines being counterfeit, but I suspect they're still

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Collins - cross

1 going to want to put an expert on to say that.

2 THE COURT: Whatever.

3 MR. MOONEY: If they have an expert, I want to have my  
4 expert available.

5 THE COURT: Essentially I think what you're saying you  
6 want him because he will say they've counterfeit for reasons  
7 different than his expert says.

8 MR. MOONEY: He may.

9 THE COURT: Even if he did, you think would be  
10 helpful?

11 MR. MOONEY: I think that would be helpful.

12 THE COURT: Okay, let's keep going. You must almost  
13 be finished, right, with him?

14 MR. HERNANDEZ: If your Honor has enough information  
15 to make a decision now, I'll stop right here.

16 THE COURT: Yes, I think I do.

17 (In open court)

18 MR. HERNANDEZ: No further questions.

19 THE COURT: Did you have anything else?

20 MR. MOONEY: No, your Honor.

21 THE COURT: Thank you very much.

22 (Witness excused)

23 THE COURT: Any other witnesses the defense wishes to  
24 call?

25 MR. MOONEY: No, your Honor.

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1           THE COURT: Any the government wishes to call?

2           MR. HERNANDEZ: No, your Honor.

3           THE COURT: Give me a couple of minutes.

4           (Recess)

5           THE COURT: So please be seated.

6           So we discussed at this Daubert hearing the defense  
7 proposal to present during the trial next week Mr. C.R. Collins  
8 as an expert witness. With the provisions that I will describe  
9 to you, I am going to allow the defense to use Mr. Collins as  
10 an expert, but let me explain exactly what I think he can  
11 testify to based on today's Daubert hearing.

12           So, first of all, the proponent of expert testimony  
13 has the burden of establishing by a preponderance of the  
14 evidence that the admissibility requirements of Rule 702 are  
15 satisfied. Ultimately, the District Court is the ultimate  
16 gatekeeper.

17           So the citation is United States versus Williams, 506  
18 F.3d 151, a Second Circuit case from 2007. The case law tells  
19 us also although a hearing is sometimes required in order for  
20 the court to properly exercise its gatekeeping function, such a  
21 hearing is not required in all cases. The cite is Kerrigan  
22 versus Maxon Industries, 223 F. Supp. 2d 626, a case from the  
23 Eastern District of Pennsylvania, 2002.

24           Based on the submissions of the government and the  
25 defense, I thought it was important to have such a hearing

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1 because I thought it was a close, somewhat of a close call as  
2 to whether Mr. Collins would be an expert. We have had the  
3 hearing. I was able to observe his demeanor and credibility,  
4 and among other factors, these were adduced during his  
5 testimony.

6 He has some 30-plus years of consulting experience in  
7 the wine industry, since the mid to late 1970's. He appears to  
8 have been to some 300-plus wine auctions. He has had previous  
9 wine employment experience with Draper & Esquin, and he has  
10 experience on his own as a consultant in the wine industry.

11 He testified that he has, among other, his other  
12 functions, has been an adviser to clients as to whether or not  
13 they should purchase particular wine based on issues of  
14 authenticity, provenance, and/or relatedly whether such wine is  
15 counterfeit.

16 He also explained his methodology, how he goes about  
17 reviewing a bottle, for example, of wine to authenticate and  
18 talking about the label and the cork and the bottle itself and  
19 the wine and the space between the cork and the top of the  
20 wine, et cetera, et cetera. It is all in the transcript.

21 He also mentioned that he yesterday examined the  
22 bottles of wine that are in controversy in this case and  
23 concluded his opinion, that is -- which he certainly may give  
24 at the trial -- he concluded that if he were recommending the  
25 purchase of that wine to one of his clients with a hundred

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1 percent certainty, he would recommend against buying it for  
2 drinkability.

3 If I remember correctly, with 80 percent at least  
4 certainty he would recommend that there was sufficient red  
5 flags as to the authenticity and/or whether or not the wine was  
6 counterfeit, 80 percent he would tell his clients with  
7 certainty not to acquire the wine.

8 With the remainder, he said some of the wine appeared  
9 to be authentic or "authentic" I think would be charitably what  
10 he concluded, but he said even as to that wine, he had not with  
11 certainty concluded his examination. So even that wine is  
12 suspect.

13 As I've said to counsel at sidebar, in large measure  
14 Mr. Collins supports, in my opinion -- I am not responsible for  
15 trial strategy, but it seems to support the opinion of the  
16 government or the central fact the government is seeking to  
17 establish at this trial, which is that the wine that Mr.  
18 Collins examined yesterday is in large measure not authentic.

19 But, anyway, he certainly can give that testimony. He  
20 certainly can give his opinion as to that as well. Beyond  
21 that, I have difficulty in understanding or even permitting  
22 opinions that go much beyond that.

23 (Continued on next page)

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1                   THE COURT: I think he can opine, Mr. Collins can,  
2 that in the wine industry, or in his experience, there is or  
3 can be counterfeit wines, but I don't think he can go beyond  
4 that. He established no basis for the conclusion, if there is  
5 such a conclusion, that there is more counterfeiting today than  
6 there was before. The only way you could ever establish that  
7 would be through direct knowledge (a) of the amount of  
8 counterfeiting now and the amount then. But in order even to  
9 do that you would have to know how much wine is sold today  
10 versus how much wine was sold at a historical point in time,  
11 and he presented no information or no knowledge to make that  
12 comparison. So I would not allow him to testify that there is  
13 a bigger wine counterfeiting problem today than there has been  
14 in the past.

15                   By the way, I'm not concluding that I know one way or  
16 another whether there is or there isn't, but I don't think he  
17 does either. I don't think he has presented enough of a basis  
18 or a background to say that.

19                   So with that, those limitations -- and here,  
20 importantly, in my determination are these principles. So the  
21 cases tell us -- and one such case is United States v.  
22 Carneglia, C-a-r-n-e-g-l-i-a. It is an Eastern District case  
23 from 2009, and you can find these quotes there. One is that  
24 the Federal Rules of Evidence and the Rules of Criminal  
25 Procedure are designed to ensure that the defense, as well as

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1 the government, can fully present their cases to secure  
2 fairness. Application of the rules to permit the defendant to  
3 gather and present information favorable to his defense needs  
4 to take into account the due process and fairness.

5 So the defense is trying to, you know, mount its  
6 defense, and largely I am significantly persuaded by this  
7 concept that we should essentially go the extra step in favor  
8 of the defense in an evidentiary issue such as the one we have  
9 before us. And when we're talking preponderance, that might  
10 even help tip the scale in favor that there is a preponderance.

11 So for those reasons and for those limitations, I will  
12 allow, if the defense in fact is intending and wishes to call  
13 Mr. Collins next week, to call him and he can testify as an  
14 expert.

15 So thanks very much, and I think we have done all of  
16 our preparation and we are just ready to see each other on  
17 Monday and commence the trial.

18 MR. MOONEY: What time do you want us on Monday, your  
19 Honor?

20 THE COURT: I would like you there at 9:15 in the  
21 courtroom. So we are going to be, remember, in 26A on Monday  
22 for purposes of picking the jury because it is a larger room.  
23 When we get the jury picked, we will come down here to commence  
24 the trial. If it takes, for example, all day, we would stay up  
25 there all day. Perhaps we will stay up there all day anyway

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1 since you will all be organized to be there. Maybe I should  
2 just say we will spend the first day in 26A.

3 MR. MOONEY: One other housekeeping matter, your  
4 Honor. I am hoping that is our letter on clothing. We found  
5 out that Mr. --

6 THE COURT: It is not. It is your application for  
7 cell phone and --

8 MR. MOONEY: We are happy about that one, too.

9 THE COURT: Yes.

10 MR. MOONEY: But we learned that Mr. Kurniawan has  
11 been moved from Brooklyn to next door, and our letter says that  
12 he is in Brooklyn. So we would ask the Court to interlineate  
13 in our letter, just cross out the Brooklyn MDC and change it to  
14 the Manhattan MDC in the letter.

15 THE COURT: OK. That doesn't appear here at all.

16 MR. MOONEY: No. It is in the letter that we sent  
17 over requesting clothing. It should have been faxed over.

18 THE COURT: Christine, do you have that? Let me take  
19 a look.

20 It is coming down from chambers.

21 MR. MOONEY: Great. One other matter, your Honor.

22 The government has a warrant to pick up  
23 Mr. Kurniawan's automobiles. His mother speaks only Chinese.  
24 So we have been trying to make arrangements so that she isn't  
25 faced with a bunch of people showing up and doesn't know what

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1 is going on with the working of that. Apparently, the warrant  
2 is ready to expire. I think we all agree that we can get a  
3 week extension so that we can go through the steps of making  
4 sure that that has all been cleared --

5 THE COURT: That is fine.

6 MR. MOONEY: -- that has the least amount of  
7 disruption to her as possible.

8 THE COURT: That is fine.

9 MR. SITHIAN: Yes, your Honor. Anand Sithian, I am a  
10 Special Assistant U.S. Attorney.

11 The government has agreed with counsel for the defense  
12 to extend the warrant for a week, to December 16th, to  
13 negotiate a surrender of the vehicle.

14 THE COURT: That's fine. I will approve that  
15 extension.

16 MR. SITHIAN: Thank you.

17 THE COURT: We are just waiting for the order.

18 MR. VERDIRAMO: Your Honor, I have been now advised,  
19 as well, I apologize, but we have to submit yet another letter  
20 to the Court with regard to his dietary restrictions that we  
21 would ask your Honor to -- a so-ordered letter as well with  
22 regard to his dietary restrictions.

23 THE COURT: Haven't you done that already?

24 MR. VERDIRAMO: No.

25 THE COURT: I see.

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1 MR. VERDIRAMO: As soon as I possibly can. I stepped  
2 out of here to take care of the other letter.

3 THE COURT: I will sign that.

4 MR. VERDIRAMO: Thank you, your Honor.

5 Or, possibly, Judge, to save a step, the letter that  
6 has come down from chambers that addresses the clothing issue,  
7 if your Honor wanted to hand write in language that he be  
8 provided a vegetarian diet, that would take care of the whole  
9 thing.

10 THE COURT: Do you think that would work?

11 MR. VERDIRAMO: I would hope so, Judge, that you  
12 further order that he be provided a vegetarian diet.

13 THE COURT: I will do it if you want. In my  
14 experience, you know, it may very well work to have both ideas  
15 in the same letter. Sometimes it is better --

16 MR. VERDIRAMO: If it doesn't work, I will resubmit  
17 it.

18 THE COURT: OK.

19 MR. VERDIRAMO: Thank you, Judge.

20 MR. MOONEY: We will know quickly.

21 THE COURT: So instead of Brooklyn --

22 MR. MOONEY: He is in Manhattan.

23 THE COURT: Is he already in Manhattan?

24 MR. MOONEY: He is already in Manhattan. They moved  
25 him today, which I guess is a lot more convenient for the next

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1 couple of weeks.

2 THE COURT: I would think.

3 (Pause)

4 Counsel, do you want to take a look at this and see if  
5 that works for you?

6 MR. VERDIRAMO: Thank you, your Honor.

7 (Pause)

8 Your Honor, I think this is perfect. Thank you very  
9 much.

10 THE COURT: Let us just make a copy for our files.

11 MR. VERDIRAMO: Yes, your Honor. Thank you.

12 (Pause)

13 THE COURT: OK. I think that's it, folks.

14 Thanks. Good to see you.

15 MR. MOONEY: Thank you very much, your Honor.

16 MR. VERDIRAMO: Thank you, Judge.

17 THE COURT: Yes.

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